

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DARICK B. KNOX,

Defendant-Appellant.

UNPUBLISHED

January 28, 2000

No. 210275

Oakland Circuit Court

LC No. 97-154236 FC

Before: Zahra, P.J., and Saad and Gage, JJ.

PER CURIAM.

A jury convicted defendant of armed robbery, MCL 750.529; MSA 28.797, and the court sentenced him to five to twenty years in prison. He appeals as of right, and we affirm.

I

Defendant challenges the sufficiency of the evidence supporting the conviction. This argument has no merit. When we review a challenge to the sufficiency of the evidence, we view the evidence in a light most favorable to the prosecution and determine whether any rational trier of fact could have found that the essential elements of the crime were proven beyond a reasonable doubt. *People v Johnson*, 460 Mich 720, 723; 597 NW2d 73 (1999).

The elements of armed robbery are: (1) an assault, (2) a felonious taking of property from the complainant's person or presence, and (3) while the defendant is armed with a weapon. *People v Johnson*, 206 Mich App 122, 123; 520 NW2d 672 (1994). The third element is satisfied if the defendant is armed either with a dangerous weapon or with some other article used or fashioned in such a way as to lead a reasonable person to believe that it was a dangerous weapon at the time of the robbery. *People v Jolly*, 442 Mich 458, 465; 502 NW2d 177 (1993). According to trial testimony, the complainant objected when defendant and his co-defendant, Weldon Logan (who later pleaded guilty), began to unplug the complainant's stereo. Logan hit the complainant with a beer bottle, and both men kicked the complainant repeatedly in the stomach and head. The complainant also testified that he was struck in the head a subsequent time with a hard object, which might have been a vodka

bottle found at the crime scene. Logan and defendant removed the stereo from defendant's home. This evidence establishes the elements of armed robbery.

Defendant argues on appeal that this evidence is not reliable because of inconsistencies between the witnesses' accounts and because the witnesses were not credible. Defendant's argument is without merit because the credibility of witnesses' testimony is a matter for the trier of fact to ascertain, and will not be resolved anew on appeal. *People v Lemmon*, 456 Mich 625, 637; 576 NW2d 129 (1998); *People v Gadomski*, 232 Mich App 24, 28; 592 NW2d 75 (1998).

II

Defendant claims that his sentence violated the proportionality rule. Sentences within the guidelines recommended minimum sentence range are presumptively proportionate. Sentences within the guidelines recommended minimum sentence range are presumptively proportionate. *People v Hogan*, 225 Mich App 431, 437; 571 NW2d 737 (1997). We will not find an abuse of discretion unless the defendant presents unusual circumstances that would overcome that presumption. *Id.*; *People v Avant*, 235 Mich App 499, 520; 597 NW2d 864 (1999). A sentencing court need not consider a defendant's age in fashioning a sentence. *People v Piotrowski*, 211 Mich App 527, 532-533; 536 NW2d 293 (1995). Furthermore, defendant's lack of a prior criminal record is not an unusual circumstance that serves to rebut the presumption of proportionality. Nor do we find that defendant's substance abuse problem qualifies as an unusual circumstances. The sentence is therefore proportionate.

Affirmed.

/s/ Brian K. Zahra
/s/ Henry William Saad
/s/ Hilda R. Gage