

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

KEVIN LAUREL,

Defendant-Appellant.

UNPUBLISHED

January 28, 2000

No. 210721

Wayne Circuit Court

LC No. 96-008332

Before: O’Connell, P.J., and Meter and T. G. Hicks*, JJ.

MEMORANDUM.

Defendant appeals as of right from the sentence of one to ten years in prison for his conviction of assault with intent to do great bodily harm less than murder, MCL 750.84; MSA 28.729, entered after a bench trial. Defendant was also convicted of possession of a firearm during the commission of a felony, MCL 750.227b; MSA 28.424(2), for which he was sentenced to a mandatory consecutive term of imprisonment of two years. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant argues that he is entitled to resentencing because the misscoring of Prior Record Variable 6 (Prior relationship to the criminal justice system) resulted in the imposition of an excessive sentence for the assault conviction. We disagree and affirm. Application of the guidelines presents a cognizable claim only if “(1) a factual predicate is wholly unsupported, (2) a factual predicate is materially false, and (3) the sentence is disproportionate.” *People v Mitchell*, 454 Mich 145, 177; 560 NW2d 600 (1997). If the sentence is proportionate, an error in the calculation of the guidelines provides no basis for relief. *People v Raby*, 456 Mich 487, 496; 572 NW2d 644 (1998). Defendant’s minimum term for the assault conviction was within the guidelines, and thus is presumed to be proportionate. *People v Hogan*, 225 Mich App 431, 437; 571 NW2d 737 (1997). Even assuming arguendo that the guidelines scoring was erroneous, defendant is not entitled to relief because the minimum term is not disproportionate to the seriousness of the offense and the offender. *People v Milbourn*, 435 Mich 630, 636; 461 NW2d 1 (1990). Defendant fired multiple shots at an occupied vehicle. The scoring of sentencing

* Circuit judge, sitting on the Court of Appeals by assignment.

guidelines is a means to achieve a proportionate sentence, *Raby, supra* at 496, and defendant received a proportionate sentence.

Affirmed.

/s/ Peter D. O'Connell

/s/ Patrick M. Meter

/s/ Timothy G. Hicks