STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED May 2, 2000
v	No. 210707 Wayne Circuit Court
DARRELL A. HAGERMAN, Defendant-Appellant.	Criminal Division LC No. 97-003393

Before: Cavanagh, P.J., and Sawyer and Zahra, JJ.

PER CURIAM.

Defendant was charged with first-degree murder, MCL 750.316(1); MSA 28.548(1), and possession of a firearm during the commission of a felony, MCL 750.227b; MSA 28.424(2). Following a bench trial, defendant was convicted of second-degree murder, MCL 750.317; MSA 28.549, and felony-firearm. He was sentenced to twenty-five to fifty years' imprisonment for the second-degree murder conviction and two years' imprisonment for the felony-firearm conviction. Defendant now appeals as of right. We affirm.

On March 17, 1997, after school let out at Detroit Pershing High School, students Kenny Baumgart and Mike McCume engaged in an argument in the school's parking lot. The argument was apparently the result of an earlier confrontation between Baumgart's friend, Ventonio Johnson, McCume, defendant and others. As Baumgart turned to walk away from McCume in the parking lot, he was shot in the back and killed. Witnesses testified that defendant fired a gun at the victim and into the air. Witnesses' accounts differed as to the number of shots fired and whether other bystanders also possessed guns.

On appeal, defendant argues he should be resentenced because the trial court improperly considered defendant's failure to admit guilt and defendant's and the victim's race in imposing sentence. Defendant also claims his sentence for second-degree murder is disproportionate. We disagree with each of defendant's arguments.

A trial court's imposition of a sentence is reviewed on appeal for an abuse of discretion. *People v Rice (On Remand)*, 235 Mich App 429, 445; 597 NW2d 843 (1999). A sentence

constitutes an abuse of discretion when it is disproportionate to the seriousness of the circumstances surrounding the offense and the offender. *People v Milbourn*, 435 Mich 630, 636; 461 NW2d 1 (1990); *Rice, supra* at 445.

In the present case, prior to sentencing, defendant stated that he felt remorse for the victim's family, but stated that he "can only take so much of the blame for the life that was took [sic]." Subsequently, in discussing defendant's potential for rehabilitation, the trial court stated, "That first step for rehabilitation comes in accepting responsibility for your actions. Which you've only done to a limited degree." Defendant claims that statement indicates defendant's failure to admit guilt was a factor in deciding his sentence. A sentencing court may not consider a defendant's refusal to admit guilt in imposing sentence. *People v Yennior*, 399 Mich 892; 282 NW2d 920 (1977); *People v Draper*, 150 Mich App 481, 489; 389 NW2d 89 (1986); see *People v Wesley*, 428 Mich 708, 711; 411 NW2d 159 (1987). However, a sentencing court may properly consider the defendant's attitude toward his criminal behavior, *People v Ross*, 145 Mich App 483, 495; 378 NW2d 517 (1985), and the defendant's lack of remorse, *People v Houston*, 448 Mich 312, 323; 532 NW2d 508 (1995). Here, the trial court did not ask defendant to admit his guilt or offer defendant a lesser sentence if he admitted guilt. See *Wesley, supra* at 718-719; *People v Drayton*, 168 Mich App 174, 178-179; 423 NW2d 606 (1988). Instead, the complained-of comment indicates the trial court was concerned that defendant's failure to appreciate the consequences of his actions would have a negative effect on his rehabilitation. See *Wesley, supra* at 716; *Drayton, supra* at 178-179. Such a consideration was proper. *Houston, supra* at 323.

Defendant's argument that the trial court improperly considered defendant's and the victim's race in imposing sentence is not supported by the record. Defendant claims that the trial court's statement, "And that cut both ways," in connection with a discussion regarding race, suggests the trial court "chose a severe sentence partly to counter anticipated media criticism that he was tougher on crime against blacks than on crime against whites." Considering the trial court's statements in context, there is no indication the trial court improperly considered the issue of race. It reasonably appears that the trial court's purpose in discussing the issue of race was to stress that all people have equal value, no matter their race. Moreover, it appears that the trial court's comments regarding race were directed more toward the media covering the trial than the parties involved in this case.

Defendant's final argument challenging the proportionality of his sentence for second-degree murder is also without merit. Defendant was sentenced within the sentencing guidelines range of 96 to 300 months' imprisonment and, thus, his sentence is presumptively neither excessively severe nor unfairly disparate. *People v Broden*, 428 Mich 343, 354-355; 408 NW2d 789 (1987); *People v Kennebrew*, 220 Mich App 601, 609; 560 NW2d 354 (1996). While it is true that defendant was a young,[1] first time offender, the circumstances surrounding the victim's murder are such that the trial court did not abuse its discretion in sentencing defendant at the high end of the guidelines range. Defendant admittedly possessed and fired a gun in the parking lot of the school. School had just let out and there were many students in the vicinity of the argument between the victim and defendant's associate. The evidence suggested defendant fired several shots, at least some of which were aimed in the direction of the victim after the victim turned his back to walk away from the argument. The victim died as a result

of a gunshot wound. Given these circumstances and the objectives of reforming the offender, protecting society, punishing the offender and deterring commission of similar offenses, *Rice*, *supra* at 446, defendant's twenty-five to fifty-year sentence for second-degree murder is proportionate. Accordingly, the trial court did not abuse its discretion in sentencing defendant.

Affirmed.

/s/ Mark J. Cavanagh
/s/ David H. Sawyer
/s/ Brian K. Zahra

[1] A sentencing court is not required to tailor a defendant's sentence to account for his age. *People v Lemons*, 454 Mich 234, 258; 562 NW2d 447 (1997).