

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DAMON T. PERRY,

Defendant-Appellant.

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UNPUBLISHED

November 17, 2000

No. 214707

Wayne Circuit Court

LC No. 90-008441

Before: Jansen, P.J., and Doctoroff and O'Connell, JJ.

PER CURIAM.

Defendant appeals as of right from a resentencing, in which he was sentenced to two concurrent terms of twenty to fifty years of imprisonment and ten to twenty-five years of imprisonment for his convictions of assault with intent to murder, MCL 750.83; MSA 28.278, and a mandatory consecutive term of two years for his conviction of possession of a firearm during the commission of a felony, MCL 750.227b; MSA 28.424(2). We affirm.

On February 5, 1991, defendant was convicted, following a jury trial, of two counts of assault with intent to murder and one count of felony-firearm. He was subsequently sentenced on February 20, 1991, to two concurrent terms of twenty-five to fifty years of imprisonment and ten to thirty years of imprisonment for the assault convictions, consecutive to the mandatory term of two years for the felony-firearm conviction. In April of 1991, defendant filed a claim of appeal in this Court; however, his convictions and sentences were affirmed. *People v Perry*, unpublished opinion per curiam of the Court of Appeals, issued August 25, 1993 (Docket No. 139388). Defendant's delayed application for leave to appeal to our Supreme Court was subsequently denied. *People v Perry*, 445 Mich 872 (1994).

On November 25, 1996, defendant moved in the trial court to correct his sentence pursuant to MCR 6.429(A) because a prior unrelated conviction of his had been reversed and dismissed.<sup>1</sup> Defendant requested that the trial court resentence him because the initial sentences

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<sup>1</sup> This conviction, obtained on August 20, 1990, was for possession of less than twenty-five grams of cocaine. This Court subsequently reversed and remanded for a new trial; however, the case was dismissed on remand on September 25, 1991.

were based on inaccurate information. The trial court denied defendant's motion. Thereafter, this Court, in an unpublished order entered on February 25, 1998 (Docket No. 200569), reversed the trial court's order denying defendant's motion to correct sentence and remanded for resentencing because the original sentences were based on inaccurate information since the sentencing information report was based on a prior conviction that was subsequently dismissed. On July 23, 1998, defendant was resentenced to concurrent terms of twenty to fifty and ten to twenty-five years of imprisonment for the assault convictions, consecutive to two years for the felony-firearm conviction, and received credit of 2,919 days.

Defendant's first challenge relates to the investigator's version of the offense contained in the presentence investigation report (PSIR), which defendant contends is inaccurate. At the resentencing hearing, defense counsel stated on the record that he had reviewed the PSIR with defendant and that there were no additions or corrections to be made to the report. Consequently, any challenge to the accuracy of the PSIR on appeal has been waived. MCR 6.429(C). Additionally, defendant's contention that that trial court resentenced him without the use of a reasonably updated report is wrong. There is an updated PSIR, dated July 20, 1998, that was utilized by the trial court, and defendant's resentencing hearing was held on July 23, 1998.

To the extent that defendant again claims that his sentencing guidelines range was improperly scored, we note that defendant has failed to argue the merits of this issue in the body of his brief. Therefore, the issue is effectively waived because we do not know which scores in particular defendant is attacking or how they may have been improperly scored. *Mudge v Macomb Co*, 458 Mich 87, 105; 580 NW2d 845 (1998), quoting *Mitcham v Detroit*, 355 Mich 182, 203; 94 NW2d 388 (1959).

With regard to defendant's second issue that the trial court exhibited prejudice toward defendant, we have reviewed the resentencing transcript and find absolutely no indication of bias or prejudice on behalf of the trial court. Any frustration indicated by the trial court was in regard to this Court's order remanding the case for resentencing. The trial court's frustration notwithstanding, it was obviously not imputed to defendant who received lower sentences.

Defendant's contention that his sentences are disproportionate is similarly without merit. Defendant's minimum sentence of twenty years is well within the guidelines range of 120 to 300 months. Sentences that fall within the guidelines range are presumed to be neither excessively severe nor unfairly disparate. *People v Broden*, 428 Mich 343, 354-355; 408 NW2d 789 (1987). Defendant has failed to present any unusual circumstances to overcome the presumption of proportionality. *People v Sharp*, 192 Mich App 501, 505-506; 481 NW2d 773 (1992). Moreover, given the very serious nature of the crime and defendant's criminal history, the trial court did not abuse its discretion in sentencing defendant. *People v Milbourn*, 435 Mich 630; 461 NW2d 1 (1990).

Lastly, defendant argues that he received ineffective assistance of counsel at resentencing. Defendant's claim is that counsel was ineffective for failing to object to the scoring of the prior record variables and the offense variables, which led to an erroneous sentencing guidelines score. Contrary to defendant's assertions, counsel did, in fact, argue that prior record variable six was improperly calculated. Additionally, the trial court was well aware of the facts of the case as presented at trial, and, as the court stated, it based its sentences on the circumstances of the case.

Defendant has simply failed to show that counsel was deficient or that his actions were prejudicial, therefore, we cannot conclude that defendant was denied the effective assistance of counsel. *People v Toma*, 462 Mich 281, 302; 613 NW2d 694 (2000).

Affirmed.

/s/ Kathleen Jansen

/s/ Martin M. Doctoroff

/s/ Peter D. O'Connell