

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

MARIO A. ESPINOZA,

Defendant-Appellant.

UNPUBLISHED

January 16, 2001

No. 218730

Genesee Circuit Court

LC No. 98-003135-FC

Before: Neff, P.J., and Holbrook, Jr., and Jansen, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of voluntary manslaughter, MCL 750.321; MSA 28.553, carrying a concealed weapon (CCW), MCL 750.227; MSA 28.424, possession of a firearm during the commission of a felony, MCL 750.227b; MSA 28.424(2), and two counts of assault with intent to do great bodily harm less than murder, MCL 750.84; MSA 28.279. He was sentenced to concurrent prison terms of ten to fifteen years for the manslaughter conviction, three to five years for the CCW conviction, six to ten years each for the assault with intent to do great bodily harm less than murder convictions, and a consecutive two-year term for the felony-firearm conviction. Defendant appeals as of right. We affirm.

Defendant's ten-year minimum sentence for manslaughter, although a departure from the sentencing guidelines' recommended range, is not disproportionately severe in light of the circumstances surrounding defendant and his crime. Defendant's senseless, aggressive, and violent acts were not adequately reflected in the scoring of the guidelines and justified the departure from the recommended range. *People v Houston*, 448 Mich 312, 320; 532 NW2d 508 (1995); *People v Milbourn*, 435 Mich 630, 659-660; 461 NW2d 1 (1990).

The trial court did not abuse its discretion by permitting the prosecutor to cross-examine a witness regarding his prior statements to police, which referred to defendant's gang membership. *People v Taylor*, 195 Mich App 57, 60; 489 NW2d 99 (1992). The prior statements were a proper subject for cross-examination, and the brief reference to gangs was not unfairly prejudicial. MRE 403; *People v Figures*, 451 Mich 390, 399-400; 547 NW2d 673 (1996); *People v Mills*, 450 Mich 61, 75-76; 537 NW2d 909 (1995), mod 450 Mich 1212 (1995).

Affirmed.

/s/ Janet T. Neff

/s/ Donald E. Holbrook, Jr.

/s/ Kathleen Jansen