

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

RAKU L. JONES,

Defendant-Appellant.

UNPUBLISHED

January 30, 2001

No. 218200

Wayne Circuit Court

LC No. 97-004717

Before: Hoekstra, P.J., and Whitbeck and Meter, JJ.

PER CURIAM.

A jury convicted defendant Raku Jones of assault with intent to do great bodily harm less than murder after the evidence showed that his verbal argument with the complainant escalated into a physical altercation, injuring the complainant.¹ Jones appeals as of right, challenging his sentence of 60 to 120 months in prison. We affirm.

I. Basic Facts And Procedural History

The complainant encountered Jones and Gregory Reynolds at a local convenience store in June 1997. After purchasing beer, Jones asked the complainant to drive him to a certain house to purchase marijuana. The complainant drove Jones and Reynolds to the house, but the three men left after determining that they would not be able to buy drugs there. Jones then asked the complainant to drive him to Mettetal Street. Once there, according to the complainant and Reynolds, Jones got out of the complainant's car, slammed the door, and then began to insult the complainant. Jones, however, claimed that the complainant started the argument.

What happened next was disputed at trial. According to the complainant, Jones pointed a gun at his face, demanded money, and fired the gun. The complainant said that he was shot twice in the face and once in the back and leg; other trial testimony confirmed these injuries. Reynolds² claimed that Jones hit the complainant with a bottle, and then both he and Jones shot

¹ MCL 750.84; MSA 28.279.

² Reynolds pleaded guilty to assault with intent to do great bodily harm less than murder for his role in this incident. MCL 750.84; MSA 28.279.

the complainant. Jones, however, contended that he hit the complainant on the head with a half-full, forty-ounce beer bottle, but did not shoot the complainant.

Although the prosecutor originally charged Jones with assault with intent to commit murder,³ the jury convicted Jones of the lesser charge of assault with intent to do great bodily harm less than murder.⁴ The jury found him not guilty of assault with intent to rob while armed⁵ and using a firearm in the commission of a felony.⁶

The trial court sentenced Jones to 60 to 120 months for assault with intent to do great bodily harm, with a credit of 99 days already served. The trial court ordered Jones to serve this sentence consecutively to a sentence of 36 to 240 months for a previous armed robbery conviction.⁷

II. Standard Of Review

We review the trial court's decision to impose the sentence in this case for an abuse of discretion.⁸

III. The Presumption of Proportionality

Because the sentence the trial court imposed on Jones was within the judicial sentencing guidelines,⁹ this sentence is presumptively proportionate.¹⁰ In order for Jones to prove that this sentence is disproportionate despite this presumption, he must demonstrate that there were unusual circumstances surrounding the offense or that there are unusual circumstances that surround him.¹¹ Jones claims that the evidence that he is from a stable home environment, lacks education and job skills, and is young constitute just such unusual circumstances meriting a

³ MCL 750.83; MSA 28.278.

⁴ MCL 750.84; MSA 28.279.

⁵ MCL 750.89; MSA 28.284.

⁶ MCL 750.227b; MSA 28.424(2).

⁷ Evidently, Jones was on bond pending resolution of an armed robbery charge when he committed the assault in this case. The presentence investigator's report indicates that he pleaded guilty to armed robbery in exchange for the prosecutor's agreement to drop a carjacking charge. It is unclear whether the prosecutor would recommend a particular prison sentence as part of this plea agreement.

⁸ *People v Milbourn*, 435 Mich 630, 635; 461 NW2d 1 (1990).

⁹ The judicial sentencing guidelines applied to crimes committed before January 1, 1999. See *People v Greaux*, 461 Mich 339, 342, n 5; 604 NW2d 327 (2000).

¹⁰ *People v Broden*, 428 Mich 343, 354-355; 408 NW2d 789 (1987).

¹¹ See *People v Sharp*, 192 Mich App 501, 505; 481 NW2d 773 (1992) (discussing statement in *Milbourn*, *supra* at 661, that "even a sentence within the guidelines could be an abuse of discretion in unusual circumstances.").

lower sentence in his case. However, case law¹² suggests that factors such as age and employment background/employability are not unusual circumstances that warrant resentencing. A stable family background fits in this class of common, rather than unusual, circumstances. Further, to the extent that Jones argues that this sentence is disproportionately severe because the trial court required him to serve it consecutively to another sentence, even he concedes that the consecutive nature of the sentence is irrelevant to the question of proportionality in this case.¹³ Accordingly, we conclude that sentence in this case is proportionate to the severe injury Jones inflicted on his victim.

Affirmed.

/s/ Joel P. Hoekstra
/s/ William C. Whitbeck
/s/ Patrick M. Meter

¹² See *People v Lemons*, 454 Mich 234, 258-259; 562 NW2d 447 (1997); *People v Piotrowski*, 211 Mich App 527, 532-533; 536 NW2d 293 (1995); *People v Daniel*, 207 Mich App 47, 54; 523 NW2d 830 (1994).

¹³ See *People v Warner*, 190 Mich App 734, 736; 476 NW2d 660 (1991).