

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

OSARIC CHARLES TERRYDYE,

Defendant-Appellant.

UNPUBLISHED

March 9, 2001

No. 219811

Oakland Circuit Court

LC No. 98-163674-FC

Before: Bandstra, C.J., and Griffin and Collins, JJ.

PER CURIAM.

Defendant was convicted by a jury of assault with intent to do great bodily harm less than murder, MCL 750.84; MSA 28.279, carrying a concealed weapon, MCL 750.227; MSA 28.424, and possession of a firearm during the commission of a felony, MCL 750.227b; MSA 28.424(2). Defendant was sentenced to five to ten years' imprisonment for the assault conviction, two to five years' imprisonment for the CCW conviction, and two years' imprisonment for the felony-firearm conviction. He appeals as of right. We affirm.

Defendant contends that his sentences for assault with intent to do great bodily harm less than murder and CCW are disproportionate because he has a minor criminal record and only fired the gun to protect himself and to scare people away from the car. This Court reviews sentencing decisions for abuse of discretion. *People v Milbourn*, 435 Mich 630, 636; 461 NW2d 1 (1990); *People v Fetterley*, 229 Mich App 511, 525; 583 NW2d 199 (1998). A sentence constitutes an abuse of discretion if it is disproportionate to the seriousness of the circumstances surrounding the offense and the offender. *Milbourn*, *supra* at 636.

Defendant was sentenced to 60 to 120 months for the assault conviction and to 24 to 60 months for the carrying a concealed weapon conviction. The guidelines' minimum sentence range for assault with intent to do great bodily harm less than murder was scored at 36 to 80 months. A sentence within the guidelines' recommended range is presumptively proportionate. *People v Broden*, 428 Mich 343, 354-355; 408 NW2d 789 (1987).¹

¹ When multiple offenses, which will be served concurrently, are being scored, it is necessary to score only the offense carrying the highest maximum penalty. *People v Hill*, 221 Mich App 391,

(continued...)

The trial court considered the following factors in imposing sentence: (1) defendant's age; (2) defendant's prior record; (3) the failure of probation to deter defendant from committing future crimes; (3) the seriousness of the instant crime; and (4) the lasting impact of the instant crime on the victim. All of these factors are proper considerations for a trial court to weigh in imposing sentence. *People v Lemons*, 454 Mich 234, 259; 562 NW2d 447 (1997) (defendant's age); *People v Oliver*, 242 Mich App 92, 98-99; 617 NW2d 721 (2000) (defendant's criminal record); *People v Rice (On Remand)*, 235 Mich App 429, 446; 597 NW2d 843 (1999) (circumstances of offense); *People v Compagnari*, 233 Mich App 233, 236; 590 NW2d 302 (1998) (effect of the crime on the victim).

The circumstances of the offense and defendant's past history support the conclusion that the sentence was proportionate. Defendant aimed and fired a gun at a sixteen-year-old victim in a crowded parking lot. Not only did the shooting result in serious physical and emotional damage to the victim, the shooting also endangered the lives of the crowd gathered in the parking lot. Moreover, defendant was on probation when he committed the instant offenses, was not complying with the terms of his probation, and a warrant for violating his probation had been issued for his arrest approximately two months before defendant committed the instant offenses. We see no abuse of discretion in the sentences assessed.

We affirm.

/s/ Richard A. Bandstra
/s/ Richard Allen Griffin
/s/ Jeffrey G. Collins

(...continued)

396; 561 NW2d 862 (1997).