

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

AHMED SHARRIEFF,

Defendant-Appellant.

UNPUBLISHED

May 21, 2002

No. 232001

Wayne Circuit Court

LC No. 99-002208

Before: Smolenski, P.J., and Neff and White, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of second-degree murder, MCL 750.317, and possession of a firearm during commission of a felony, MCL 750.227b. The trial court sentenced defendant to eighteen to thirty-five years' imprisonment for the murder conviction and a consecutive term of two years' imprisonment for the felony-firearm conviction. Defendant appeals as of right. We affirm.

Defendant first argues that the trial court erred by failing to sua sponte instruct the jury that a witness' prior inconsistent statement can only be used to impeach the witness and not as substantive evidence of defendant's guilt. Because we find no prior inconsistent statement was introduced, we find no error.

Defendant did not seek an instruction from the trial court and agreed to the instructions as given; therefore, the issue was not preserved for appeal. *People v Lee*, 243 Mich App 163, 183; 622 NW2d 71 (2000). This Court reviews unpreserved claims of nonconstitutional error only if the defendant establishes plain error affecting substantial rights. *People v Carines*, 460 Mich 750, 761-764; 597 NW2d 130 (1999).

One of the prosecution's witnesses testified that he spoke to defendant the night before the shooting, and defendant indicated that he was angry with his family concerning his mother's medical treatment. After prompting by the prosecutor, including reference to statements the witness made to the police, the witness also testified that defendant told him that he hoped he did not have to hurt anyone over the situation with his mother. Defendant asserts that this exchange constituted a prior inconsistent statement. We disagree.

Although the prosecutor asked the witness if he had given an earlier statement to police, no statement was read into the record and there was no indication that the prior statement was in

any way inconsistent with the witness' trial testimony. Because we conclude that the witness' testimony did not include a prior inconsistent statement, we find no error in the trial court's failure to sua sponte instruct the jury related to the use of prior inconsistent statements.

Defendant next argues that he is entitled to resentencing because the trial court failed to articulate on the record the reasons for the sentences imposed. We disagree.

A first conviction of felony-firearm carries a mandatory two-year sentence. MCL 750.227b(1). Defendant's minimum eighteen-year sentence for the second-degree murder conviction was within the legislative sentencing guidelines of 144 to 240 months. Michigan Sentencing Guidelines Manual, 2001 Edition, p 91. This Court is statutorily required to affirm a sentence within the legislative guidelines unless the defendant alleges a scoring error or the use of improper information, MCL 769.34(10). Defendant makes no claim of any scoring error or use of improper information at sentencing.

While the trial court in this case did not refer to the sentencing guidelines or provide any other explanation for the sentence imposed, the court imposed sentence almost immediately after the prosecutor argued for a sentence at the top end of the guidelines and defense counsel argued for a sentence at the low end of the guidelines. In an almost identical situation, we held that in the context of the preceding arguments of counsel, it is inescapably clear that the court was sentencing the defendant under the guidelines even though the judge himself did not actually speak those words. *People v Lawson*, 195 Mich App 76, 78; 489 NW2d 147 (1992). The articulation requirement is satisfied where the articulation is provided by the context of counsel's preceding comments. *Id.* The *Lawson* court further found this result maximized judicial resources. *Id.* We conclude that the necessary articulation was supplied in this case by the context of counsel's preceding remarks. Moreover, a remand for the trial court to state on the record that the sentence was within the guidelines would be counterproductive; therefore, a remand for further articulation is unnecessary. *Lawson*, *supra* at 78.

Affirmed.

/s/ Michael R. Smolenski

/s/ Janet T. Neff

/s/ Helene N. White