

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

V

ALBERT JAMES ISBY,

Defendant-Appellant.

UNPUBLISHED
December 2, 2010

No. 293879
Wayne Circuit Court
LC No. 07-013928-FH

Before: BECKERING, P.J., and JANSEN and TALBOT, JJ.

MEMORANDUM.

After remand, defendant again appeals by right the sentences imposed following his bench-trial convictions of unarmed robbery, MCL 750.530, and aggravated assault, MCL 750.81a. We affirm. This appeal has been decided without oral argument. MCR 7.214(E).

Defendant argues that he is again entitled to resentencing because his sentence constitutes cruel and unusual punishment. He maintains that because this Court previously vacated his initial sentence of 4 to 15 years for unarmed robbery, the trial court's imposition of an identical sentence on remand constituted reversible error, especially given that the court found no support for scoring offense variables (OVs) 7 or 10. We disagree.

Defendant acknowledges that he was sentenced within the appropriate sentencing guidelines range. A sentence within the guidelines range is presumptively proportionate, *People v Broden*, 428 Mich 343, 354-355; 408 NW2d 789 (1987); *People v Powell*, 278 Mich App 318, 323; 750 NW2d 607 (2008), and a proportionate sentence does not constitute cruel and unusual punishment, *People v Drohan*, 264 Mich App 77, 91-92; 689 NW2d 750 (2004); *People v Terry*, 224 Mich App 447, 456; 569 NW2d 641 (1997).

Defendant has presented nothing to rebut this presumption. Defendant's only argument in favor of his position appears to be that the sentence imposed on remand is disproportionate because it was the same sentence the trial court imposed in the first instance, before this Court's remand. However, apart from generalized comments concerning cruel and unusual punishment and proportionality, defendant provides nothing to show that his claim has merit. The sentence

is not clearly disproportionate to the offender or the instant offense. See *People v Smith*, 482 Mich 292, 309; 754 NW2d 284 (2008). Nor does defendant challenge his status as a third habitual offender.¹ Defendant's actions in the instant case were violent, arguably brutal, and involved far more force than necessary to take the victim's property. Defendant has not shown that he is entitled to resentencing.

Affirmed.

/s/ Jane M. Beckering

/s/ Kathleen Jansen

/s/ Michael J. Talbot

¹ It is unclear why defendant was not initially sentenced as a habitual offender. However, defendant was served with a habitual offender notice, the parties agreed on defendant's habitual offender status during resentencing, and defendant has not challenged this status on appeal.