

STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

CRAIG V. HUDSON,

Defendant-Appellant.

UNPUBLISHED

July 23, 1996

No. 178356

LC No. 93-014314

Before: Griffin, P.J., and Bandstra and M. Warshawsky,* JJ.

GRIFFIN, P.J. (concurring in part and dissenting in part).

I concur in that portion of the majority's opinion that affirms defendant's conviction. However, I respectfully dissent as to the affirmance of defendant's sentence.

Although defendant's nine to twenty year sentence is within the sentencing guidelines, the Supreme Court in *People v Milbourn*, 435 Mich 630, 661; 461 NW2d 1 (1990), recognized that some sentences that are within the sentencing guidelines may nevertheless be disproportionate. In my view, this is one of the exceptional cases envisioned by *Milbourn*. See also *People v Moseler*, 202 Mich App 296, 300-303; 508 NW2d 192 (1993)(Griffin, J., dissenting).¹

OFFENDER

First, I find the background of defendant to be atypical of offenders convicted of assault with intent to murder. The sentencing judge shared this view. Prior to imposing sentence, Judge Terrance K. Boyle made the following statement regarding defendant:

I frequently say these days at sentences that this is a sad story. But I just keep repeating myself. They are all sad stories. *But I want to say, honestly, for the*

* Circuit judge, sitting on the Court of Appeals by assignment.

record, this is the saddest I ever had for a sentence. Personally, it's just the saddest, at least in terms of promise blown.

The defendant is twenty-nine years old. He is in a stable marriage of almost seven years. He has one child by that marriage. He has two stepchildren for whom he provides as well as legal guardianship of his twelve year old sister-in-law. He comes from a stable family background himself, all of whom are clearly supportive of him.

As I already indicated on the record, the Court received several letters that are the most well crafted letters I have ever received consistently. They all, each and everyone of them, is on behalf of the defendant. He has been employed in relatively long term employment, virtually from the time that he left high school to become employed full-time.

His last employer has indicated to the probation department clearly that the defendant was an outstandingly good employee and that, knowing that he has been convicted and is facing prison, that that employer would hold a job open for him because he thought that much about how he performed.

There is no evidence of any substance abuse. He never has been in trouble with the law, at least to the extent that records are available. He never has been arrested before. If there is anything, if one were to say, nobody can be that good, particularly, not in today's society, then if you wanted to look for a negative factor, the only negative factor you could find in the defendant's background is that he quit school after the eleventh grade, but he did that to work full time and he began working full time and he has been working ever since then in one capacity or another.

Everything here suggests the defendant is a fine young man. Everything except what happened in this case. It's a true sad Detroit story. [Emphasis added.]

OFFENSE

As to the crime, defendant was convicted of the serious offense of assault with intent to murder. The unarmed victim sustained serious personal injuries when he was shot twice. Defendant, however, did not possess a weapon and did not shoot the victim. Rather, defendant was tried and convicted on the basis that he aided and abetted the commission of the crime. Specifically, it was the prosecutor's theory that defendant was part of a hastily derived scheme or plan in which defendant agreed to drive his vehicle and position it in such a manner as to allow his passenger an unobstructed view and opportunity to shoot the victim. Defendant's role in this serious crime is less than is usual for offenders convicted of assault with intent to murder.

After a thorough review of the entire file including the trial transcript, sentencing transcript, presentence report, and the letters of support from defendant's wife, father, and others, I am compelled to conclude that defendant's sentence of nine to twenty years is disproportionate to the offender and the offense. *Milbourn, supra*. Accordingly, I would reverse defendant's sentence and remand for resentencing to a lesser term of years.

/s/ Richard Allen Griffin

¹ Leave denied 445 Mich 919; 519 NW2d 899 (1994) (Cavanagh, Levin, and Griffin would grant leave to appeal).