

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

MARK ALLEN METS,

Defendant-Appellant.

UNPUBLISHED

December 17, 1996

No. 178785

LC No. 93-003062-FC

Before: Jansen, P.J., and Saad and M. D. Schwartz,* JJ.

PER CURIAM.

Defendant, age eighteen, shot and killed his fifty-one year old victim thirty-three hours after the victim attempted to sexually assault defendant. A jury convicted defendant of second-degree murder, MCL 750.317; MSA 28.549 and felony firearm, MCL 750.227b; MSA 28.424(2). Defendant was sentenced to eighteen to forty years on the murder conviction and to two years on the felony firearm conviction. Defendant's sole issue on appeal is his challenge to the scoring of the sentencing guidelines. We affirm.

Defendant received a score of twenty-five points for Offense Variable 3; he contends that he should have received a score of only ten points. For OV 3 (Intent to Kill or Injure), there are four possible scores:

50 Premeditated intent to kill; or homicide committed during the perpetration or attempt to perpetrate arson, criminal sexual penetration in the first or third degree, robbery, breaking and entering of a dwelling, larceny of any kind, extortion, or kidnapping

25 Unpremeditated intent to kill; or intent to do great bodily harm; or creation of a very high risk of death or great bodily harm with knowledge that death or great bodily harm was the probable result

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

10 Intent to injure; or homicide committed in an extreme emotional state caused by an adequate provocation **and before a reasonable amount of time has elapsed for the offender to calm**; or gross negligence amounting to an unreasonable disregard for life

0 Other homicides (Emphasis added).

The instructions state to “Score ‘10’ where a killing is intentional within the definitions of murder second degree or voluntary manslaughter but the death occurred in a combative situation or in response to victimization of the offender by the decedent.” Sentencing Guidelines (2d Ed 1988) p 77.

A sentencing court’s scoring of the sentencing guidelines will be upheld if evidence exists to support the score. *People v Hoffman*, 205 Mich App 1, 24; 518 NW2d 817 (1994). Here, there was evidence: (1) that defendant had been drinking heavily, (2) that there was a thirty-three hour delay between the attempted assault and the murder, and (3) that defendant traveled a significant distance to return to the victim’s home to commit the murder. When viewed in conjunction with the record as a whole, we cannot conclude that there was no evidence to support the sentencing judge’s assignment of 25 points on OV 3.

Affirmed.

/s/ Kathleen Jansen

/s/ Henry William Saad

/s/ Michael D. Schwartz