

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

WILLIE LEE DURANT,

Defendant-Appellant.

UNPUBLISHED

December 17, 1996

No. 190136

Kalamazoo County

LC No. 94-1319-FH

Before: Sawyer, P.J., and Markman and H. A. Koselka,* JJ.

PER CURIAM.

Defendant appeals by right his 1995 jury trial conviction of felonious assault, MCL 750.82; MSA 28.277. The sentence guidelines' range for this conviction was six to twenty-four months. The trial court sentenced defendant to twenty-four to forty-eight months' imprisonment. We affirm.

This matter arises out of an incident in which defendant slashed complainant's face with a knife. Complainant testified that defendant assaulted him when he refused to allow defendant to speak with defendant's girlfriend (the sister of complainant's girlfriend). Defendant testified that he hit complainant with a knife in his hand in self-defense because complainant had punched him and hit him with a pipe.

Defendant claims that this sentence was disproportionate. This Court reviews sentences for an abuse of discretion. *People v Milbourn*, 435 Mich 630; 461 NW2d 1 (1990). The principle of proportionality requires that sentences "be proportionate to the seriousness of the circumstances surrounding the offense and the offender." *Id.* A minimum sentence within the guidelines' range is presumptively proportionate; a defendant must present "mitigating factors relating to his criminal history or the circumstances of [the offense at issue] to overcome this presumption." *People v Vettese*, 195 Mich App 235, 246-247; 489 NW2d 514 (1992).

Here, the sentence imposed was within the guidelines' range and therefore presumptively proportionate. Defendant presented no evidence to the sentencing court of mitigating factors other than

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

to again assert that he was acting in self-defense. The sentencing court stated that the jury did not give credence to his self-defense claim and that it would not either. Defendant's contention that he cooperated with the police in other matters does not constitute a mitigating factor regarding his criminal history or the offense at issue that would overcome the presumption of proportionality. The sentencing court specifically noted that defendant's record was "replete with assaultive conduct", including sixteen prior misdemeanor offenses, and that "this was a serious assault upon an individual, with a knife, requiring stitches and hospitalization." We find that there was no abuse of discretion in the sentence imposed.

Affirmed.

/s/ David H. Sawyer

/s/ Stephen J. Markman

/s/ Harvey A. Koselka