

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JOSEPH WASHINGTON, JR.,

Defendant-Appellant.

UNPUBLISHED

December 27, 1996

No. 181479

LC No. 94-001743-FC

Before: Hood, P.J., and Neff and Mary A. Chrzanowski*, JJ.

MEMORANDUM.

Defendant was originally charged with armed robbery in connection with the robbery of a party store in Battle Creek Michigan. He was convicted by a jury of unarmed robbery, MCL 750.530; MSA 28.798. The trial court sentenced him to six to fifteen years' imprisonment. He appeals as of right, and we affirm.

Defendant argues that his sentence violates the proportionality principle of *People v Milbourn*, 435 Mich 630, 635-636, 654; 461 NW2d 1 (1990). A defendant's sentence must be proportionate to the seriousness of the circumstances of the offense and the defendant's background, and we review the trial court's sentencing of a defendant for an abuse of discretion. *Id.* at 635-636. A sentence that falls within the recommended range under the sentencing guidelines is presumed proportionate. *People v Rivera*, 216 Mich App 648, 652; ___ NW2d ___ (1996). To overcome the presumption of proportionality, a defendant must present evidence of "unusual circumstances" that render the sentence disproportionate. *Id.*

Defendant's sentence falls within the guidelines' range of two to six years. His sentence is therefore presumed proportionate, and to overcome the presumption he must present unusual circumstances. Defendant asserts that the circumstances of the instant offense render it the least serious in terms of the offense variables and urges us to consider it non-violent. He also reflects on his training as a plumber as an indication of his rehabilitation potential. We reject these proposed reasons for finding his sentence disproportionate.

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

Defendant has an extensive criminal history, and was on parole from an armed robbery conviction when he committed the instant offense. He entered the store posing as a customer purchasing a lottery ticket and food, and then grabbed the store clerk, forcing her to the ground and warning her not to activate the alarm. Defendant threatened to blow the clerk's brains out. These facts belie defendant's claim that this offense was not serious and was non-violent. Moreover, as for his rehabilitative potential, we note that following defendant's training as a plumber and release from imprisonment, where he received his training, he continued his criminal activities. Defendant has failed to overcome the presumption that his sentence was proportionate, and we find that the trial court did not abuse its discretion in sentencing defendant.

Affirmed.

/s/ Harold Hood

/s/ Janet T. Neff

/s/ Mary A. Chrzanowski