

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JAMES A. DAOUST,

Defendant-Appellant.

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UNPUBLISHED

January 10, 1997

No. 185435

LC No. 90-43758-FC

Before: Taylor, P. J. and Gribbs and R. D. Gotham,\* JJ

PER CURIAM.

In 1991, defendant was convicted by a jury of second-degree murder, felonious assault, and possession of a firearm during the commission of a felony. Defendant was sentenced to imprisonment for twenty-five to fifty years for the second-degree murder conviction, two to four years for the felonious assault conviction, and two years for the felony-firearm conviction.

This Court reversed defendant's convictions in an unpublished per curiam opinion because the trial court, through its court officer, had a substantive communication with two jurors without notifying trial counsel. *People v Daoust*, issued July 12, 1994 (Docket No. 141152).

On remand, defendant and the prosecution reached a plea/sentence agreement. In return for pleading no contest to second-degree murder, MCL 750.317; MSA 28.549, the prosecution agreed to dismiss the felonious assault and felony-firearm charges. It was also agreed that defendant's minimum sentence would not exceed fifteen years. The court sentenced defendant to fifteen to twenty-five years in prison for the second-degree murder conviction. Defendant appeals the proportionality of his sentence as of right and we affirm.

We are satisfied that defendant is not entitled to any relief because he received a sentence consistent with the sentence agreement. Under such circumstances, he has no ground to complain. *People v Cobbs*, 443 Mich 276, 285; 505 NW2d 208 (1993) (a defendant who pleads nolo contendere with knowledge of the sentence and who later seeks appellate relief under *People v*

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

*Milbourn*, 435 Mich 630; 461 NW2d 1 [1990], must expect to be denied relief on the ground that the plea demonstrates the defendant's agreement that the sentence is proportionate to the offense and the offender); *People v Rodriguez*, 212 Mich App 351, 355; 538 NW2d 42 (1995) (the fact that defendant's sentence is in accordance with his plea demonstrates his agreement that the sentence is proportionate); *People v Ward*, 206 Mich App 38, 44; 520 NW2d 363 (1994) (a defendant waives his right to challenge the proportionality of his sentence where he entered into, and was sentenced in accordance with, a sentence agreement and did not move to withdraw his plea).

In any event, we reject defendant's claim that his fifteen-year minimum sentence is disproportionate. Defendant's sentence was at the low end of the sentencing guidelines, which indicated twelve to twenty-five years. We find that defendant's sentence was proportionate because it reflected the seriousness of the matter. *People v Houston*, 448 Mich 312, 320; 532 NW2d 508 (1995).

Affirmed.

/s/ Clifford W. Taylor

/s/ Roman S. Gribbs

/s/ Roy D. Gotham