STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

MING CHAN HO,

Defendant-Appellant.

UNPUBLISHED
January 28, 1997

No. 188434

Oakland Circuit Court
LC No. 94-136288-FC

Before: Fitzgerald, P.J., and MacKenzie and A.P. Hathaway*, JJ.

PER CURIAM.

Defendant pleaded no contest to one count of armed robbery, MCL 750.529; MSA 28.797, two counts of assault with intent to murder, MCL 750.83; MSA 28.278, and three counts of possession of a firearm during the commission of a felony, MCL 750.227b; MSA 28.424(2). He was sentenced to forty to seventy years' imprisonment for the robbery and assault convictions, and the mandatory two-year term for each of the felony-firearm convictions. Defendant appeals as of right. We affirm.

Defendant first contends that he was denied effective assistance of counsel at the plea-taking proceeding because his attorney did not request that the judge state on the record the length of sentence that appeared to be appropriate for the charged offense. See *People v Cobbs,* 443 Mich 276, 283; 505 NW2d 208 (1993). To establish ineffective assistance of counsel, a defendant must show that counsel's performance was below an objective standard of reasonableness under prevailing professional norms and there is a reasonable probability that, but for counsel's error, the result of the proceedings would have been different. *Strickland v Washington*, 466 US 668; 104 S Ct 2052; 80 L Ed 2d 674 (1984); *People v Pickens,* 446 Mich 298, 302-303; 521 NW2d 797 (1994). Here, defendant has not established how he was prejudiced by his attorney's performance at the plea-taking; he merely asserts that he "might not have pleaded" had he known the sentence the judge was contemplating. Given the speculative nature of defendant's claim, we decline to find ineffective assistance of counsel.

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

Defendant next contends that his sentence, which exceeded the sentencing guidelines' recommended minimum sentence range of 96 to 180 months, was disproportionately severe. *People v Milbourn*, 435 Mich 630; 461 NW2d 1 (1990). We disagree. As explained by the trial court, this was a "brutal, cold, calculat[ed]" offense. Defendant entered a gas station and, while pointing a gun at the clerk, demanded money. After she turned the money over to him, defendant demanded the key to a safe. When the clerk explained that she did not have a key, defendant responded by shooting her three times, hitting her in the back, the chest, and the arm. He also fired at another person. This violent behavior was part of a pattern that ultimately resulted in defendant's conviction for murder in another case. Under the circumstances of this offense and this offender, we find no abuse of discretion in the sentence imposed. *Milbourn, supra.*

Finally, we reject defendant's claim that he must be resentenced because the trial court's reasons for departing from the guidelines were already factored into the guidelines' scoring. Although the guidelines were scored to reflect the brutality of the offense, they failed to take into account the execution-style shooting of the victim, defendant's absolute disregard for human life, and his extreme dangerousness. We find no abuse of discretion.

Affirmed.

/s/ E. Thomas Fitzgerald
/s/ Barbara B. MacKenzie
/s/ Amy Patricia Hathaway