STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DOUGLAS TIERRA WILSON,

Defendant-Appellant.

UNPUBLISHED
July 18, 1997

No. 198276
Recorder's Court
LC No. 94-013076

Before: Doctoroff, P.J., and MacKenzie and Griffin, JJ.

PER CURIAM.

Defendant appeals as of right from his bench trial convictions for second-degree murder, MCL 750.317; MSA 28.549, and possession of a firearm during the commission of a felony, MCL 750.227b; MSA 28.424(2). Defendant was sentenced to twenty-five to sixty-five years' imprisonment for the second-degree murder conviction, consecutive to two years' imprisonment for the felony-firearm conviction. We affirm.

On appeal, defendant first argues that the verdict contravened the great weight of the evidence. We disagree. After a bench trial, defendant need not file a motion to remand to preserve a challenge to the great weight of the evidence. MCR 7.211(C)(1)(c). Where defendant did not make a motion for a new trial, we review this issue to determine whether the verdict was manifestly against the great weight of the evidence. *People v Turner,* 62 Mich App 467, 470; 233 NW2d 617 (1975). A verdict may be vacated only when it "does not find reasonable support in the evidence, but is more likely to be attributed to causes outside the record such as passion, prejudice, sympathy, or some extraneous influence." *People v DeLisle,* 202 Mich App 658, 661; 509 NW2d 885 (1993), quoting *Nagi v Detroit United Railway,* 231 Mich 452, 457; 204 NW 126 (1925).

To prove second-degree, or common-law, murder, the prosecution must establish "(1) a death, (2) caused by an act of the defendant, (3) absent circumstances of justification, excuse, or mitigation, (4) done with an intent to kill, an intent to inflict great bodily harm, or an intent to create a very high risk of death with the knowledge that the act probably will cause death or great bodily harm." *People v Bailey,* 451 Mich 657, 669; 549 NW2d 325 (1996), quoting *People v Dykhouse,* 418 Mich 488,

508-509; 345 NW2d 150 (1984). "The elements of felony-firearm are that the defendant possessed a firearm during the commission or attempt to commit a felony." *People v Davis*, 216 Mich App 47, 53; 549 NW2d 1 (1996), citing *People v Passeno*, 195 Mich App 91, 97; 489 NW2d 152 (1992).

After a thorough review, we hold that defendant's conviction does not contravene the great weight of the evidence. On the night the victim was fatally shot, approximately five minutes after a gunshot sounded nearby, defendant entered his apartment and told his roommate that he had just knocked down and shot an older man in the mouth or neck. Defendant told a similar story to another witness. The chief medical examiner recovered a nonfatal bullet from the back of the victim's neck and a fatal bullet from the hypothalamus region of the brain, and further remarked that the scraping injuries on the victim's forehead were characteristic of injuries one would sustain from a fall. Additionally, defendant was seen in possession of the firearm which fired the fatal bullet both before and after the shooting. This evidence linking defendant to the fatal shooting constitutes ample evidence to sustain his convictions. *People v Wolfe*, 440 Mich 508, 515; 489 NW2d 748 (1992), amended 441 Mich 1201 (1992).

Next, defendant claims that his sentence is disproportionate under *People v Milbourn*, 435 Mich 630; 461 NW2d 1 (1990), and constituted cruel and/or unusual punishment. However, defendant's sentence is within the sentencing guidelines' range and is therefore presumptively proportionate. *People v Broden*, 428 Mich 343, 354-355; 408 NW2d 789 (1987); *People v Cutchall*, 200 Mich App 396, 410; 504 NW2d 666 (1993). Defendant has failed to rebut the presumption of proportionality. Indeed, defendant shot a defenseless elderly man in the head and neck. Moreover, this Court has upheld equal or larger minimum sentences for non-homicide offenses. See, e.g., *People v Marshall*, 204 Mich App 584; 517 NW2d 554 (1994) (80 to 120 years for assault with the intent to commit murder). Other jurisdictions have upheld minimum sentences exceeding twenty-five years for defendants without a prior criminal record who were convicted of second-degree murder. See, e.g., *State v Pliskaner*, 128 NH 486; 517 A2d 795 (1986) (thirty-five year minimum sentence for second-degree murder); *State v Ethridge*, ___ La App ___; 688 So 2d 1274 (1997) (forty-five year minimum sentence for attempted second-degree murder).

Because defendant's sentences are not disproportionate in relation to his crimes, they are neither cruel nor unusual. *People v Bullock*, 440 Mich 15, 40-41; 485 NW2d 866 (1992); *People v Williams (After Remand)*, 198 Mich App 537, 543; 499 NW2d 404 (1993).

Affirmed.

/s/ Martin M. Doctoroff
/s/ Barbara B. MacKenzie
/s/ Richard Allen Griffin