

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

UNPUBLISHED

Plaintiff-Appellee,

v

No. 200502

Berrien Circuit Court

LEONARD ANTWANE WILBURN, JR.,

LC No. 96-000818-FC

Defendant-Appellant.

Before: Neff, P.J., and Sawyer and Murphy, JJ.

Murphy, J. (concurring in part and dissenting in part).

I concur in affirming defendant's conviction, but contrary to the majority, I would also affirm defendant's sentence of life imprisonment. Defendant was sentenced as an habitual offender, second offense, MCL 769.11; MSA 28.1083. Although inapplicable because defendant was sentenced as an habitual offender, the sentencing guidelines provided for ten to twenty-five years' imprisonment and the presentence recommendation was for thirty to ninety years' imprisonment. Instead, the court chose to sentence defendant to life imprisonment for the conviction of assault with intent to murder, a sentence permitted by statute.

As the majority notes, the crimes for which defendant was convicted were very serious and warranted a severe penalty. Defendant, a passenger in one moving vehicle, fired a barrage of some fifteen bullets at another moving vehicle, injuring one of the occupants and totaling the vehicle. The trial court, at sentencing, observed that it was "almost [a] murder case."

Our task is to determine whether the court abused its discretion in sentencing defendant by violating the principle of proportionality. *People v Milbourn*, 435 Mich 630, 636; 461 NW2d 1 (1990). I would find that the trial court did not abuse its discretion in sentencing defendant in this case.

Unlike the majority, I do not read the record in this case to be that the sentencing court held defendant "culpable" for the criminal behavior of his parents or family members. Rather, I read the record to be that the sentencing court held defendant "culpable" for his own conduct in committing the charged crimes and for his escalating criminal behavior as evidenced by the presentence report, even though defendant was only nineteen years old. The court did comment on defendant's parental

upbringing, as well as his parent's criminal activity as referenced in the presentence report, but I interpret the court's comments to be in the context of considering defendant's social and personal history as it related to defendant's rehabilitation potential. It is not inappropriate for a court to consider defendant's social and personal history in determining a sentence. *People v Ross*, 145 Mich App 483; 378 NW2d 517 (1985). Based on my review of the record and because I do not believe that the legislatively-provided life sentence in this case violates the principle of proportionality, I would affirm defendant's conviction and sentence.

/s/ William B. Murphy