

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

MARCUS LEE ELLIOT,

Defendant-Appellant.

UNPUBLISHED

June 5, 1998

No. 198345

Wayne Circuit Court

LC No. 96-500998 FY

Before: Holbrook, Jr., P.J. and Gribbs and R.J. Danhof*, JJ.

PER CURIAM.

Defendant appeals as of right from his jury trial conviction for assault with intent to do great bodily harm less than murder. MCL 750.84; MSA 28.279. Defendant was sentenced to three to ten years' imprisonment. We affirm.

Defendant's first issue is that the prosecution failed to prove beyond a reasonable doubt each element of assault with intent to do great bodily harm. We disagree. This Court must view the evidence in the light most favorable to the prosecution and determine whether a rational trier of fact could find that the essential elements of the crime were proven beyond a reasonable doubt. *People v Hutner*, 209 Mich App 280, 282; 530 NW2d 174 (1995). Reasonable inferences and circumstantial evidence may constitute satisfactory proof of the elements of the offense. *Id.*

The elements of assault with intent to do great bodily harm less than murder are: (1) an attempt or offer with force or violence, to do corporal hurt to another, (2) coupled with an intent to do great bodily harm less than murder. *People v Peña*, 224 Mich App 650, 659; 569 NW2d 871 (1997). The law presumes that every person intends the usual consequences which accompany the use of the means employed in the manner employed. *People v Gilliam*, 27 Mich App 314, 317; 183 NW2d 364 (1970). The intent necessary to commit an offense may be found in conduct as well as words. *People v Mack*, 112 Mich App 605, 611; 317 NW2d 190 (1981).

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

The prosecution presented evidence that the victim was attacked in the apartment by another person, as defendant watched. After the initial attack, defendant picked the victim up, threw him over his shoulder, carried him down the stairs, out the front door, across the street and into the woods. Defendant then threw the victim against a tree and kicked him approximately ten to fifteen times before leaving. The victim said to the first person that found him after the beating, “they’re trying to kill me,” and when asked who he meant, he identified defendant as one of the attackers. The victim suffered severe injuries as a result of the beating, including broken ribs and internal bleeding, and had to undergo surgery. Viewing defendant's actions in the light most favorable to the prosecution, there was sufficient evidence for a rational trier of fact to find defendant guilty beyond a reasonable doubt of assault with intent to do great bodily harm.

There is no merit to defendant’s claim that his sentence, at the low end of the sentencing guidelines range, is disproportionate. *People v Milbourn*, 435 Mich 630, 636; 461 NW2d 1 (1990). A sentence within the guidelines range is presumed proportionate. *People v Kennenbrew*, 220 Mich App 601, 609; 560 NW2d 354 (1996). We note that this was a vicious crime and that defendant has an extensive criminal history. Defendant failed to allege any unusual circumstances which would cause a sentence within the sentencing guidelines range to be disproportionate. *People v Sharp*, 192 Mich App 501, 505; 481 NW2d 773 (1992).

Defendant also argues that the trial court erred in denying his motion for resentencing because his sentence was based on inaccurate information in the presentence investigation report and that counsel was ineffective because he did not object to this inaccurate information. We find that defendant is not entitled to relief. A defendant may not raise an issue challenging the accuracy of the presentence report unless the issue was raised at or before sentencing. MCL 771.14(5); MSA 28.1144(5); MCR 6.429(C). Defendant did not contest the accuracy of the presentence report at sentencing except with reference to the name of defendant’s wife. Therefore, defendant failed to preserve this issue for appeal. *People v Bailey*, 218 Mich App 645, 647; 554 NW2d 391 (1996). We also find that counsel was not ineffective for failing to object to the two alleged inaccuracies. The record indicates that defense counsel reviewed the presentence report with defendant and made objections related to defendant’s wife’s name at sentencing. Further, the record shows that, even after defendant raised the issue of inaccurate information, he never specified which information was inaccurate. Therefore, we conclude that defendant's counsel was effective. *Id.* at 647-648.

Affirmed.

/s/ Donald E. Holbrook, Jr.
/s/ Roman S. Gribbs
/s/ Robert J. Danhof