

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DASHEA GREEN,

Defendant-Appellant.

UNPUBLISHED

June 12, 1998

No. 199203

Recorder's Court

LC No. 87-002617

Before: Wahls, P.J., and Jansen and Gage, JJ.

MEMORANDUM.

Defendant appeals by leave granted the order denying his motion for relief from judgment. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant was convicted of second-degree murder, MCL 750.317; MSA 28.549, assault with intent to murder, MCL 750.83; MSA 28.278, two counts of armed robbery, MCL 750.529; MSA 28.797, and felony-firearm, MCL 750.227b; MSA 28.424(2). He was sentenced to two years' imprisonment on the felony-firearm charge, and concurrent fifty to 100 year terms on the remaining charges. This Court affirmed defendant's convictions in an unpublished, per curiam opinion. (Docket No. 104984, issued 5/23/90). Defendant did not raise a sentencing issue.

Defendant filed a motion from relief from judgment pursuant to MCR 6.500 *et seq.*, asserting that his sentences are disproportionate under *People v Milbourn*, 435 Mich 630; 461 NW2d 1 (1990). However, the Supreme Court gave limited retroactivity to its decision. *Milbourn* applies only to: (1) currently pending appeals in which the issue of sentence length has been raised and preserved, (2) currently pending first appeals in which the appellant's initial brief has not yet been filed, and (3) appeals filed after the date of the decision. *Id.*, 670. Defendant's appeal does not fall within these categories.

Under MCR 6.508(D)(3)(b)(iv), defendant has the burden of establishing that his sentence was invalid in order to obtain relief. Defendant has presented no argument that his sentence is invalid under the applicable shock the conscience standard of *People v Coles*, 417 Mich 523, 550; 339 NW2d 440

(1983). Given the circumstances of defendant's crime, we do not find that the sentence imposed shocks the judicial conscience.

Affirmed.

/s/ Myron H. Wahls

/s/ Kathleen Jansen

/s/ Hilda R. Gage