

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JAMES DOMINECK,

Defendant-Appellant.

UNPUBLISHED

July 24, 1998

No. 200904

Recorder's Court

LC No. 96-002766-01

Before: Sawyer, P.J., and Bandstra and J. B. Sullivan*, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of second-degree murder, MCL 750.317; MSA 25.549. He was sentenced to twenty-five to fifty years in prison. Defendant now appeals as of right. We affirm.

Defendant's first argument on appeal is that the trial court clearly erred in denying his motion to suppress the statement he gave to police. We disagree. Defendant contends that, before he gave his statement, he made a request for counsel that was ignored. However, the trial court found that defendant's request was equivocal, and allowed the statement. After reviewing the record, we conclude that the trial court's finding on this issue was not clearly erroneous, and that the statement was properly admitted. *People v Granderson*, 212 Mich App 673, 676-678; 538 NW2d 471 (1995).

Defendant's second argument is that the trial court abused its discretion when it aggravated defendant's sentence because he refused to admit his guilt at sentencing. We disagree. At sentencing, the trial court focused on defendant's character and criminal record. The court stated that it was concerned about the manner in which defendant killed the victim, as well as with his prior criminal record, and what still appeared to be a substance abuse problem. The trial court was also concerned with defendant's lack of remorse. However, it appears that the trial court properly considered this factor as it related to defendant's potential for rehabilitation. The trial court did not ask defendant to admit his guilt nor did it offer him a lesser sentence if he did. After reviewing the trial court's comments

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

in context, we conclude that resentencing is not required. See *People v Stewart (On Remand)*, 219 Mich App 38, 44-45; 555 NW2d 715 (1996).

Finally, defendant argues that his sentence is disproportionate. We disagree. A sentence imposed within the applicable sentencing guidelines' range is presumed to be proportionate. *People v Kennebrew*, 220 Mich App 601, 609; 560 NW2d 354 (1996). Defendant was sentenced to a minimum of twenty-five years in prison, which is within the sentencing guidelines' range of eight to twenty-five years. A sentence within the guidelines' range can be disproportionate in unusual circumstances. *People v Milbourn*, 435 Mich 630, 661; 461 NW2d 1 (1990). Here, however, defendant has failed to establish that there were any unusual circumstances that would render his sentence disproportionate.

Affirmed.

/s/ David H. Sawyer
/s/ Richard A. Bandstra
/s/ Joseph B. Sullivan