STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

VANNA KET,

Defendant-Appellant.

UNPUBLISHED
January 19, 1999

No. 204093
Ottawa Circuit Court
LC No. 96-020343 FC

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ROEUR VAN,

Defendant-Appellant.

No. 204094
Ottawa Circuit Court
LC No. 96-020390 FC

Before: Kelly, P.J., and Gribbs and Fitzgerald, JJ.

PER CURIAM.

Defendants Vanna Ket and Roeur Van were jointly tried before a jury for various offenses stemming from an assault against several people at the home of Ket's estranged wife. The jury convicted each defendant of assault with intent to commit murder, MCL 750.83; MSA 28.278, and also convicted defendant Ket of carrying a concealed weapon, MCL 750.227; MSA 28.424, possession of a firearm during the commission of a felony, MCL 750.227b; MSA 28.424(2), and six counts of felonious assault, MCL 750.82; MSA 28.277. Defendant Van pleaded guilty to being an habitual offender, second offense, MCL 769.10; MSA 28.1082, and was sentenced to a term of fifteen to thirty years' imprisonment. Defendant Ket was sentenced to two years' imprisonment for the felony-firearm conviction, to be served consecutively to concurrent terms of two to five years' imprisonment for the carrying a concealed weapon conviction, two to four years' imprisonment for each of the

felonious assault convictions, and fifteen to thirty years' imprisonment for the assault with intent to commit murder conviction. Both defendants appeal as of right. Their appeals have been consolidated for this Court's consideration. We affirm.

Defendant Van claims that he was denied his right to a fair trial by the consolidation of his trial with that of codefendant Ket. We disagree. Defendant Van has not demonstrated that his substantial rights were prejudiced or that he was denied a fair trial by his joint trial with defendant Ket. *People v Hana*, 447 Mich 325; 524 NW2d 682 (1994).

Both defendants contend that there was insufficient evidence of intent to kill to support their convictions for assault with intent to commit murder. To prove this crime, the prosecutor had to establish beyond a reasonable doubt that each defendant committed (1) an assault, (2) with an actual intent to kill, (3) which, if successful, would make the killing murder. *People v Hoffman*, 225 Mich App 103, 111; 570 NW2d 146 (1997). The intent to kill may be proven by inferences from any facts in evidence. *Id.* Alternatively, the jury could have found defendant Ket guilty as an aider and abettor. *People v Turner*, 213 Mich App 558, 568; 540 NW2d 728 (1995). In this case, the evidence indicated that defendant Van attacked Maurice Hawkins with a machete whereby he directed a forceful blow toward Hawkins' throat and then, after the vital areas of Hawkins' body were protected by Dontrell Brothers, Van continued his attack on Hawkins, splitting open and destroying Hawkins' kneecap and inflicting a severe cut to Hawkins' shin. Evidence was presented that prior to and during Van's attack on Hawkins, defendant Ket held a gun on other victims, preventing them from coming to Hawkins' assistance, and that he repeatedly commanded Van to get Hawkins while Van slashed at Hawkins with the machete until Ket took the machete away from Van and continued the assault on Hawkins himself, almost cutting off two of Hawkins' fingers and cutting Hawkins' wrist. The jury could have reasonably inferred that Ket or Van did not kill Hawkins only because Brothers selflessly used his own body to protect Hawkins' vital areas, despite Ket's and Van's continuing attacks upon Hawkins with the machete. Viewing the evidence in a light most favorable to the prosecution, *People v Hampton*, 407 Mich 354, 358; 285 NW2d 284 (1979), the evidence was ample for a reasonable factfinder to find that each defendant had an intent to kill Hawkins and to support each defendant's conviction of assault with intent to commit murder.

Finally, both defendants assert that the sentences of fifteen to thirty years' imprisonment imposed on each of them for their convictions of assault with intent to commit murder are disproportionate. We note that for each defendant the minimum sentence fell within the sentencing guidelines' range of 120 to 300 months and is therefore presumptively proportionate, *People v Broden*, 428 Mich 343, 354-355; 408 NW2d 789 (1987), absent unusual circumstances. *People v Milbourn*, 435 Mich 630, 661; 461 NW2d 1 (1990); *People v Piotrowski*, 211 Mich App 527, 532; 536 NW2d 293 (1995). The factors cited by defendants in support of their assertions that their sentences are disproportionate, i.e., their employment and relative lack of criminal history, are not "unusual circumstances" that would overcome that presumption. *Piotrowski, supra* at 533; *People v Daniel*, 207 Mich App 47, 54; 523 NW2d 830 (1994). At a minimum, we believe it to be disingenuous, if not waiver of the issue, for defendant Ket to now argue on appeal that the sentence is disproportionate when he specifically requested a sentence within the low end of the guidelines' range and received such

a sentence. See *People v Sharp*, 192 Mich App 501, 505-506; 481 NW2d 773 (1992). Moreover, in considering defendant Van's sentence as an habitual offender, we will not disturb the sentence imposed where the sentence is within the statutory limits established by the Legislature, the nature of the crime is serious, and defendant

Van's criminal history demonstrates that he is unable to conform his conduct to the law. *People v Hansford (After Remand)*, 454 Mich 320, 323-324; 562 NW2d 460 (1997).

Affirmed.

/s/ Michael J. Kelly
/s/ Roman S. Gribbs
/s/ E. Thomas Fitzgerald