

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ROGER RAYDELL DEANES,

Defendant-Appellant.

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UNPUBLISHED

February 19, 1999

No. 206293

Berrien Circuit Court

LC No. 97-400119 FH

Before: Markey, P.J., and Saad and Collins, JJ.

PER CURIAM.

Defendant was charged with second-degree murder, MCL 750.317; MSA 28.549, and possession of a firearm in the commission of a felony, MCL 750.227b; MSA 28.424(2). He was convicted by a jury of the felony-firearm charge, and voluntary manslaughter, MCL 750.321; MSA 28.553, a lesser included offense of second-degree murder. The trial court sentenced defendant to five to fifteen years' imprisonment for the voluntary manslaughter conviction, to be served consecutive to the mandatory two-year sentence for the felony-firearm conviction. Defendant appeals as of right. We affirm.

The only issue raised by defendant on appeal is whether his sentence of five to fifteen years for the voluntary manslaughter conviction violates the rule of proportionality. We review the proportionality of defendant's sentence for an abuse of discretion by the trial court. *People v Milbourn*, 435 Mich 630, 636; 461 NW2d 1 (1990); *People v Paquette*, 214 Mich App 336, 344-345; 543 NW2d 342 (1995).

The sentencing guideline range in this case was determined to be one to five years. Because defendant's minimum sentence falls within the guideline range, the sentence is presumptively valid. *People v Broden*, 428 Mich 343, 354-355; 408 NW2d 789 (1987); *People v Kennebrew*, 220 Mich App 601, 609; 560 NW2d 354 (1996). Although a sentence that falls within the guideline range can, in unusual circumstances, violate the rule of proportionality, *Milbourn*, *supra* at 661, failure to raise such circumstances in open court for consideration by the judge before sentencing waives the issue for appeal. *People v Sharp*, 192 Mich App 501, 505-506; 481 NW2d 773 (1992). Aside from a statement reiterating defendant's position that the shooting was in self-defense and indicating remorse

for the victim's death, defendant presented nothing to the trial court before sentencing. Moreover, our review of the record in this case reveals no unusual circumstances that would overcome the presumption of proportionality. Therefore, we find no abuse of discretion.

Affirmed.

/s/ Jane E. Markey  
/s/ Henry William Saad  
/s/ Jeffrey G. Collins