

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

KENYATTE I. BROWN,

Defendant-Appellant.

UNPUBLISHED

April 28, 2000

No. 209385

Oakland Circuit Court

LC No. 97-151326 FC

Before: Wilder, P.J., and Bandstra and Cavanagh, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of second-degree murder, MCL 750.317; MSA 28.549, and possession of a firearm during the commission of a felony, MCL 750.227b; MSA 28.424(2). He was sentenced to 22¹/₂ to 50 years in prison for the second-degree murder conviction, to be served consecutively to a two-year sentence for the felony-firearm conviction. Defendant appeals as of right. We affirm.

Defendant's sole argument on appeal is that, at his sentencing hearing, he was denied the right of allocution to which he is entitled under MCR 6.425(D)(2)(c). Defendant failed to preserve this issue for appeal by lodging an objection below, and therefore, our review is limited to avoiding manifest injustice. MCR 2.613(A); MCL 769.26; MSA 28.1096; *People v Griffin*, 235 Mich App 27, 44; 597 NW2d 176 (1999).

At defendant's sentencing, the following colloquy occurred between defendant and the trial court:

THE COURT: Would you like to say anything on your own behalf before I pass sentence, Mr. Brown?

MR. BROWN: I'd like to say I'm sorry that it happened and --

THE COURT: Things got out of hand. After the first shot or the second shot or the fourth shot, at what point when you were executing this young man were you out of hand?

MR. BROWN: No answer.

Defendant did not offer any further comments. The trial court then made some additional remarks and imposed sentence on defendant.

The court rule affording defendants a right of allocution, MCR 6.425(D)(2)(c), provides in pertinent part:

(2) Sentencing Procedure. The court must sentence the defendant within a reasonably prompt time after the plea or verdict unless the court delays sentencing as provided by law. At sentencing the court, complying on the record, must:

(c) give the defendant, the defendant's lawyer, the prosecutor and the victim an opportunity to advise the court of any circumstances they believe the court should consider in imposing sentence

MCR 6.425(D)(2)(c) requires strict compliance and should be understood in all cases to require the trial court to inquire specifically of the defendant whether he wishes to address the court before sentence is imposed. *People v Berry*, 409 Mich 774, 781; 298 NW2d 434 (1980); *People v Lugo* 214 Mich App 699, 712; 542 NW2d 921 (1995). The trial court must refrain from forming its sentencing decision until the defendant has been allowed his right to allocute. *People v Shuler*, 188 Mich App 548, 552; 470 NW2d 492 (1991).

In the present case, the trial court specifically asked defendant prior to imposing sentence whether he had anything to say, to which defendant responded that he was "sorry that it happened." Although defendant insists that he was interrupted by the trial court and never afforded another opportunity to allocute, nothing in the record supports this assertion. Neither defendant nor his counsel indicated on the record that defendant had not finished saying what he had to say. Instead, the record is reasonably interpreted to suggest that defendant simply ceased talking and the trial court commenced with imposing sentence. In the absence of any evidence supporting defendant's assertion that he was interrupted by the trial court and that he intended to offer additional remarks on his own behalf, we must conclude from the record, that defendant was not denied his right of allocution. In any event, even if he was interrupted, a single interruption of a defendant's allocution, when he was otherwise allowed to speak, does not deny his right of allocution. *People v Reeves*, 143 Mich App 105, 107; 371 NW2d 488 (1985). Accordingly, we find no manifest injustice.

Affirmed.

/s/ Kurtis T. Wilder
/s/ Richard A. Bandstra
/s/ Mark J. Cavanagh