

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DAVID ARMSTRONG JONES,

Defendant-Appellant.

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UNPUBLISHED

July 7, 2000

No. 216903

Eaton Circuit Court

LC No. 90-000082-FC

Before: Gage, P.J., and Gribbs and Sawyer, JJ.

PER CURIAM.

Defendant appeals by leave granted from an order denying relief from judgment. Following a 1990 jury trial, defendant was convicted of armed robbery, MCL 750.529; MSA 28.797, breaking and entering an occupied dwelling, MCL 750.110; MSA 28.305, unlawful driving away of an automobile, MCL 750.413; MSA 28.645, and felony-firearm, MCL 750.227b; MSA 28.424(2). Defendant was sentenced to concurrent terms of fifty to seventy-five years' imprisonment for the armed robbery conviction, ten to fifteen years for the breaking and entering conviction, forty to sixty months for the unlawful driving away conviction, and to a consecutive two-year term for the felony-firearm conviction. We affirm.

Along with other issues, defendant previously challenged the proportionality of his sentence in his appeal by right, and, in an unpublished per curiam opinion, a panel of this Court found defendant's sentence proportionate to the seriousness of the circumstances surrounding the offense and the offender. *People v Jones*, Docket No. 137059, issued 4-7-94. Defendant now argues that the trial court erred by departing upward from the sentencing guidelines' recommendation based on his age. According to defendant, basing the sentence on improper factors deprived him of due process rights and his right to be free from unlawful punishment. US Const, Ams V, VIII, XIV. There is no merit to this claim. While the trial court mentioned defendant's age, the court's focus at sentencing was on the violence of the crime in this case, where defendant dragged the victim from his bed at gunpoint and beat him in the head with a hammer while the victim prayed and pleaded for his life. We find no abuse of discretion.

Defendant also argues that he was deprived of his due process rights and right to be free from unlawful punishment were the trial court sentenced him to a minimum term that he has no reasonable

probability of surviving, and therefore his sentence was not indeterminate. US Const, Ams V, VIII, XIV. This issue is also without merit. By providing a minimum and a maximum term, the court issued an indeterminate sentence, the sentence was proportionate, and by sentencing within the statutory maximum authorized for his offense, the trial court complied with the legal requirements. *People v Lemons*, 454 Mich 234, 258; 562 NW2d 447 (1997); *People v Merriweather*, 447 Mich 799, 809; 527 NW2d 460 (1994).

Nor is there any merit to defendant's claim that he was denied the effective assistance of trial and appellate counsel on his appeal of right. To establish ineffective assistance of counsel, defendant must show that (1) counsel's performance was below an objective standard of reasonableness under prevailing professional norms, (2) a reasonable probability that, but for counsel's error, the result of the proceedings would have been different, and (3) the result of the proceeding was fundamentally unfair or unreliable. *People v Stanaway*, 446 Mich 643, 687-688; 521 NW2d 557 (1994); *People v Poole*, 218 Mich App 702, 718; 555 NW2d 485 (1996). The same standards that apply to a claim of ineffective assistance of trial counsel also apply to a claim of ineffective assistance of appellate counsel. *People v Reed*, 198 Mich App 639, 646; 499 NW2d 441 (1993). We find that neither trial nor appellate counsel's performance fell below an objectively reasonable standard. *Stanaway, supra* at 687-688.

Affirmed.

/s/ Hilda R. Gage  
/s/ Roman S. Gibbs  
/s/ David H. Sawyer