

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

FEDERICO VEGA-PUGA,

Defendant-Appellant.

UNPUBLISHED
October 31, 2000

No. 222822
Van Buren Circuit Court
LC No. 93-008521-FC

Before: Griffin, P.J., and Cavanagh and Gage, JJ.

MEMORANDUM.

Defendant appeals as of right from his sentence of twenty-five to forty years in prison imposed on his plea-based conviction of second-degree murder, MCL 750.317; MSA 28.549. We affirm.

Following this Court's vacation of his conviction of first-degree murder, MCL 750.316; MSA 28.549, defendant pleaded guilty to second-degree murder, MCL 750.317; MSA 28.549. The trial court sentenced defendant to twenty-five to forty years in prison, with credit for 2,366 days.

Defendant argues that his sentence is disproportionate to his circumstances and to those of the offense. *People v Milbourn*, 435 Mich 630, 636; 461 NW2d 1 (1990). We disagree and affirm defendant's sentence. The key test of the proportionality of a sentence is whether it reflects the seriousness of the matter. *People v Houston*, 448 Mich 312, 320; 532 NW2d 508 (1995). Defendant's minimum term of twenty-five years was within the sentencing guidelines, and thus is presumptively proportionate. *People v Hogan*, 225 Mich App 431, 437; 571 NW2d 737 (1997). The evidence showed that defendant argued with his uncle about a pickup truck, struck his uncle at least twice with an aluminum baseball bat, and then strangled him with an electrical cord. No evidence suggested that decedent struggled with defendant. The factors cited by defendant, i.e., his lack of a prior record, his work history, and his young age, do not overcome the presumption that his minimum term is proportionate. *People v Daniel*, 207 Mich App 47, 54; 523 NW2d 830 (1994).

Furthermore, defendant argues that his sentence is so grossly disproportionate that it constitutes cruel and/or unusual punishment. US Const, Am VIII; Const 1963, art 1, § 16. We disagree. A

sentence which is proportionate is constitutionally valid. *People v Bullock*, 440 Mich 15, 29-30; 485 NW2d 866 (1992); *People v Terry*, 224 Mich App 447, 456; 569 NW2d 641 (1997).

Affirmed.

/s/ Richard Allen Griffin

/s/ Mark J. Cavanagh

/s/ Hilda R. Gage