

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ALI HASAN ABDUL-MALIK,

Defendant-Appellant.

UNPUBLISHED

March 2, 2001

No. 220080

Macomb Circuit Court

LC No. 98-000282-FC

Before: Whitbeck, P.J., and Murphy and Cooper, JJ.

PER CURIAM.

A jury convicted defendant Ali Hasan Abdul-Malik of armed robbery,¹ conspiracy to commit armed robbery,² and possession of a firearm during the commission of a felony.³ The trial court sentenced Abdul-Malik to serve concurrent terms of ten to thirty years' imprisonment for his armed robbery and conspiracy convictions, to be preceded by the mandatory two-year prison term for his felony-firearm conviction. Abdul-Malik appeals as of right. We affirm.

I. Basic Facts And Procedural History

Abdul-Malik and several other individuals robbed an Elias Brother's Big Boy restaurant in Clinton Township in January 1998. While the robbery was in progress, the restaurant manager fled from the front customer entrance to seek help and, as she crossed the restaurant parking lot, she heard someone yelling at her to "stop, get down." When the restaurant manager glanced back, she saw a person wearing a hooded sweatshirt and maroon ski mask standing near the restaurant entrance pointing what she believed to be a gun at her. Moments later, as she was running to the gas station across the street to call the police, she heard two gunshots. When the restaurant manager returned to the restaurant with the police, she found money missing from the cash register.

¹ MCL 750.529; MSA 28.797.

² MCL 750.157a; MSA 28.354(1).

³ MCL 750.227b; 28.424(2).

Clinton Township Police Officer Daniel Allen testified that when he arrived at the restaurant, he saw a suspect, later identified as Teddy Mann, attempting to leave the area. Officer Allen apprehended Mann and ordered him to get onto the ground. According to Officer Allen, a knife was underneath the suspect.

Clinton Township Police Officer William Furno interviewed Mann the morning after the robbery. As a result of this interview, he broadcast an alert asking area police departments to be on the lookout for a stolen red Chrysler and several possibly armed suspects, including Abdul-Malik. Following a telephone conversation with personnel of the Eastpoint Police Department, Officer Furno retrieved Abdul-Malik, and a .38 caliber handgun that had been recovered during Abdul-Malik's arrest, from that department. According to Officer Furno, Abdul-Malik told him that he had been involved with Mann and others in planning the robbery, that he (Abdul-Malik) chased the restaurant manager from the restaurant and tried to get her to stop, and that his gun fired "accidentally" as he ran from the restaurant; his gun was a silver .38 caliber revolver similar to the weapon the Eastpoint Police Department recovered during his arrest.

The prosecutor played a videotape of Abdul-Malik's statements to the jury at trial and his confession was admitted into evidence. A Michigan State Police fingerprint technician testified that he was able to determine that one fingerprint taken from the cylinder of the .38 caliber handgun belonged to Abdul-Malik.

When Mann testified at trial, he admitted that he participated in the robbery, but stated that Abdul-Malik was not part of the group that committed the robbery. Mann explained that he originally implicated Abdul-Malik in the offense in order to send the police on a "wild goose chase," which he assumed they would eventually determine was a "dead end." Abdul-Malik testified on his own behalf, claiming that he was not involved in the crime and that he confessed only because the police kept "badgering" him. Despite hearing this evidence favorable to the defense, the jury convicted Abdul-Malik.

Abdul-Malik does not challenge the evidence or law supporting his conviction. Rather, the sole issue he raises in this appeal is the proportionality of the minimum ten-year prison sentences the trial court imposed on him.

II. Sentence Proportionality

A. Standard Of Review

We review a defendant's sentence for an abuse of discretion.⁴ A sentencing court abuses its discretion if it imposes a sentence that does not reflect the seriousness of the circumstances surrounding the offense and the offender.⁵

⁴ *People v Milbourn*, 435 Mich 630, 636; 461 NW2d 1 (1990).

⁵ *Id.*

B. Abdul-Malik's Sentence

The judicial sentencing guidelines proposed a minimum sentence range of five to fifteen years' imprisonment for Abdul-Malik's armed robbery and conspiracy convictions. Because his minimum sentence of ten years is precisely in the middle of this recommended range, we presume that these minimum sentences are "neither excessive nor disparate."⁶ In order to overcome this presumption, a defendant must present "unusual circumstances" that reveal that the minimum sentence is disproportionate to the "seriousness of the matter."⁷

Contrary to Abdul-Malik's claim, that he lacks a violent criminal history does not mitigate the very serious nature of this crime.⁸ Although he argues that his minimum sentences are at the most severe end of the range, which should be reserved for only the most severe offenses and offenders, his sentences actually are in the middle of the range of proposed minimum sentences. To the extent that he attempts to minimize the seriousness of the crime by noting that he recanted his confession and claimed that his gun discharged accidentally, the restaurant manager presented circumstantial evidence that he had actually fired a gun at her. In this case, the jury properly discharged its duty by weighing the evidence and concluding that his testimony did not present the more compelling version of the facts of this case. The trial court's sentencing decision reflected this conclusion, which we will not disturb on appeal.⁹ Further, the trial court properly relied on the fact that Abdul-Malik could have killed the restaurant manger when he discharged his firearm while aiming. Indeed, the sentencing guidelines required the trial court to consider this factor and it may, in some cases, even justify an upward departure from the recommended minimum sentence range.¹⁰ Because the facts of this case speak for themselves and Abdul-Malik has failed to present us with any unusual factors that mitigate the seriousness of this offense, we conclude that the trial court properly exercised its discretion by imposing these mid-range minimum sentences.

Affirmed.

/s/ William C. Whitbeck
/s/ William B. Murphy
/s/ Jessica R. Cooper

⁶ *People v Kennebrew*, 220 Mich App 601, 609; 560 NW2d 354 (1996).

⁷ *Milbourn*, *supra* at 661.

⁸ See *People v Daniel*, 207 Mich App 47, 54; 524 NW2d 830 (1994).

⁹ See, generally, *People v McRunels*, 237 Mich App 168, 181; 603 NW2d 95 (1999).

¹⁰ See *People v Granderson*, 212 Mich App 673, 680-681; 538 NW2d 471 (1995).