

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JAMES ROBERT ROSAS,

Defendant-Appellant.

UNPUBLISHED

December 14, 2001

Nos. 221175

Saginaw Circuit Court

LC No. 98-016495-FJ

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JEREMY ROBERT ROSAS,

Defendant-Appellant.

Nos. 221187

Saginaw Circuit Court

LC No. 98-016494-FJ

Before: Bandstra, C.J., and Fitzgerald and Gage, JJ.

PER CURIAM.

Following a jury trial, each defendant was convicted of four counts of felonious assault, MCL 750.82, one count of carrying a concealed weapon, MCL 750.227, and possession of a firearm during the commission of a felony, MCL 750.227b. Each defendant was sentenced to prison terms of two to four years for the felonious assault conviction, two to five years for the CCW conviction, and two years for the felony-firearm conviction. In this consolidated appeal, defendants, who were sixteen years old at the time of the crimes, appeal as of right the sentences imposed. We affirm.

Docket No. 221175

Defendant James Robert Rosas (“James”) first argues that the trial court abused its discretion when it sentenced him under MCR 6.931 as an adult. We disagree. The trial court applied the criteria in MCR 6.931 in determining whether James should be sentenced as an adult. Although the court determined that James was amenable to treatment, MCR 6.931(c)(i), the court

also determined that James' prior criminal and educational record, which included using racial slurs and inciting violence in school, indicated that he would disrupt the rehabilitation of others in the program. MCR 6.931(c)(ii). Hence, we find no abuse of discretion in the trial court's decision to sentence James as an adult.¹

James also argues that his sentence was disproportionate. The sentence imposed is within the minimum recommended guidelines range and is therefore presumptively proportionate. *People v Broden*, 428 Mich 343, 354-355; 408 NW2d 789 (1987). Defendant argues that sentencing juveniles within the sentencing guidelines results in a disproportionate sentence. However, age alone does not present an unusual circumstance warranting a downward departure from the guidelines range. The trial court did not abuse its discretion in fashioning a sentence that is proportionate to the offense and the offender. *People v Milbourn*, 435 Mich 630; 461 NW2d 1 (1990).

Docket No. 221187

Defendant Jeremy Robert Rosas ("Jeremy") argues that the trial court erred in its factual findings relative to MCR 6.931. We review a trial court's factual findings for clear error. MCR 2.631(C); *People v Swirles (After Remand)*, 218 Mich App 133, 136; 553 NW2d 357 (1996). Defendant asserts that the trial court erred when it found that Jeremy was not amenable to treatment in a juvenile setting because his conduct reflected a pattern of violent behavior that indicated unamenability to treatment. After a review of the record, we find the trial court did not err in its factual findings based on Jeremy's record of violence and weapons charges, including a concealed weapons arrest just three weeks after the instant offense.

Jeremy also argues that the trial court did not give substantial and compelling reasons for departing from the sentencing guidelines. *People v Rockey*, 237 Mich App 74, 79; 601 NW2d 887 (1999). We disagree. The trial court specifically stated that it was exceeding the guidelines because of Jeremy's unscored weapons offense. A sentencing court may properly consider the facts of pending charges. *People v Coulter (After Remand)*, 205 Mich App 453, 456; 517 NW2d 827 (1994). Therefore, no error occurred.

Affirmed.

/s/ Richard A. Bandstra
/s/ E. Thomas Fitzgerald
/s/ Hilda R. Gage

¹ James' contention that the trial court erred in determining that the best method of rehabilitation for James was in the adult system is misplaced. The trial court did not make this determination. Rather, the court determined that James' behavior would be detrimental to others in the juvenile system.