

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

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

V

WENDY LYNN ZIMMER,

Defendant-Appellant.

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UNPUBLISHED

December 18, 2001

No. 224665

Muskegon Circuit Court

LC No. 99-043172-FH

Before: Gage, P.J., and Jansen and O'Connell, JJ.

PER CURIAM.

Defendant appeals as of right from her bench trial conviction for the involuntary manslaughter of her two-year old child, MCL 750.321, for which the trial court sentenced her to 7 to 15 years' imprisonment. We affirm.

Defendant first contends that she should receive a new trial because she did not knowingly, understandingly and intelligently waive her right to a jury trial. Michigan Court Rule 6.402(B) requires the following:

Before accepting a waiver, the court must advise the defendant in open court of the constitutional right to trial by jury. The court must also ascertain, by addressing the defendant personally, that the defendant understands the right and that the defendant voluntarily chooses to give up that right and to be tried by the court. A verbatim record must be made of the waiver proceeding.

The trial court specifically told defendant that she had a constitutional right to a trial by jury, and asked defendant whether she wished to waive that right, which would result in a trial by the court. Defendant responded affirmatively that she intended to waive this right, and in the presence of the court signed a written waiver that described her constitutional right to a jury trial and declared her desire to give up that right and be tried by a judge. Because these circumstances amply demonstrate that defendant understood and voluntarily relinquished her right to a jury trial, we cannot conclude that the trial court clearly erred in finding that defendant waived this right. *People v Leonard*, 224 Mich App 569, 595-596; 569 NW2d 663 (1997); *People v Shields*, 200 Mich App 554, 560-561; 504 NW2d 711 (1993).

Defendant next asserts that she received ineffective assistance of counsel because her attorney failed to inform the court at the sentencing hearing that defendant suffered from depression. The record reflects that before the hearing the trial court had read the presentence investigation report (PSIR), which discussed defendant's family history of depression, that defendant herself began approximately one year of counseling for depression at age sixteen, and that at the time of the hearing defendant had returned to counseling. While defense counsel did not utter the word "depression" or otherwise refer specifically to defendant's mental history during the hearing, counsel did refer to defendant's PSIR and urged the court to consider defendant's personal history when imposing sentence. Accordingly, we find no ineffective assistance. *People v Sabin (On Second Remand)*, 242 Mich App 656, 659; 620 NW2d 19 (2000).

Defendant next characterizes her sentence as unduly harsh. We review the trial court's sentence for an abuse of discretion, which occurs when the court violates the principle of proportionality requiring that a sentence must be proportionate to the seriousness of the offense and the defendant's criminal record. *People v Noble*, 238 Mich App 647, 661; 608 NW2d 123 (1999). Defendant's seven-year minimum sentence was presumptively proportionate because it fell within the guidelines range of 24 to 84 months, and defendant's lack of a criminal history does not constitute an unusual circumstance that would overcome this presumption. *People v Daniel*, 207 Mich App 47, 54; 523 NW2d 830 (1994). Furthermore, it does not appear that defendant's family history of depression qualifies as an unusual mitigating circumstance in this case because no testimony linked defendant's depression to the instant crime. Even considering defendant's family history of depression, however, we do not find disproportionate the 7 to 15 year term imposed by the court for defendant's neglect in permitting her child to die of starvation in a soiled diaper that ulcerated the child's skin, while defendant spent hours during the estimated time of the child's death in bars drinking alcohol.

Affirmed.

/s/ Hilda R. Gage  
/s/ Kathleen Jansen  
/s/ Peter D. O'Connell