

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JAMES JONES,

Defendant-Appellant.

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UNPUBLISHED

February 1, 2002

No. 224831

Wayne Circuit Court

Criminal Division

LC No. 98-012993

Before: White, P.J., and Whitbeck, C.J., and Holbrook, J.

PER CURIAM.

Defendant was convicted, following a jury trial, of second-degree murder, MCL 750.317, and sentenced to a term of thirty-five to sixty years' imprisonment. He appeals as of right, and we affirm.

Defendant was charged with first-degree felony murder, MCL 750.316, predicated on the underlying offense of first-degree child abuse, MCL 750.136b, in connection with the beating death of the four-year-old son of defendant's girlfriend, with whom defendant lived.

Defendant argues that the trial court erred by instructing the jury on second-degree murder as a lesser offense, because such an instruction was not supported by the evidence and served to promote jury compromise. The record reveals that defense counsel explicitly requested that the court instruct the jury on the lesser offenses of second-degree murder, third-degree child abuse, and manslaughter, and that the court instructed the jury on each of these offenses as requested. Because defense counsel requested the very instruction that defendant now challenges, defendant has waived this issue for appeal. *People v Carter*, 462 Mich 206, 215; 612 NW2d 144 (2000). Further, we find no error in the instruction, and decline defendant's invitation to urge the Supreme Court to abandon the rule established in *People v Jenkins*, 345 Mich 440, 442; 236 NW2d 503 (1975), requiring that an instruction on second-degree murder be given in every case charging first-degree murder. Here, the jury was properly permitted to conclude that defendant did not knowingly or intentionally cause serious physical, or severe mental, harm, but that he acted with willful and wanton disregard of the likelihood that the natural tendency of his acts was to cause great bodily harm.

Defendant next argues that the trial court abused its discretion by exceeding the sentencing guidelines recommended minimum sentence of ten to twenty-five years and imposing a sentence of thirty-five to sixty years' imprisonment. Because defendant has not presented a

copy of his presentence investigation report on appeal, despite a request from this Court, we deem this issue waived. MCR 7.212(C)(6); *People v Rodriguez*, 212 Mich App 351, 355; 538 NW2d 42 (1995). In any event, the record reveals that the trial court properly considered the brutality of the beating administered to the young victim as a basis for departing from the guidelines, and we find no abuse of discretion because the sentence is proportionate to the circumstances of the offense and the offender. *People v Milbourne*, 435 Mich 630, 635-636; 461 NW2d 1 (1990); *People v Bennett*, 241 Mich App 511, 515; 616 NW2d 703 (2000).

Affirmed.

/s/ Helene N. White

/s/ William C. Whitbeck

/s/ Donald E. Holbrook, Jr.