

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

V

HARRISON MICHAEL SMITH,

Defendant-Appellant.

UNPUBLISHED

June 3, 2004

No. 245209

Wayne Circuit Court

LC No. 02-008109

Before: Markey, P.J., and Wilder and Meter, JJ.

MEMORANDUM.

Defendant appeals as of right his conviction of felonious assault, MCL 750.82, and his sentence of five years' probation, entered after a bench trial. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

First, defendant argues that the evidence was insufficient to support his conviction of felonious assault. We disagree. When reviewing a challenge to the sufficiency of the evidence in a bench trial, we view the evidence presented in a light most favorable to the prosecution, and determine whether a rational trier of fact could find that the essential elements of the crime were proven beyond a reasonable doubt. The trier of fact may make reasonable inferences from direct or circumstantial evidence in the record. *People v Petrella*, 424 Mich 221, 268-270, 275; 380 NW2d 11 (1985); *People v Vaughn*, 186 Mich App 376, 379-380; 465 NW2d 365 (1990).

In a bench trial, the court must make findings of fact and state separately its conclusions of law. MCR 6.403. Findings are sufficient if it appears that the trial court was aware of the issues in the case and correctly applied the law. *People v Smith*, 211 Mich App 233, 235; 535 NW2d 248 (1995). A trial court's findings of fact are reviewed for clear error. MCR 2.613(C).

The elements of felonious assault are: (1) an assault; (2) with a dangerous weapon; and (3) with the intent to place the victim in reasonable apprehension of an immediate battery. *People v Davis*, 216 Mich App 47, 53; 549 NW2d 1 (1996). An assault is an attempt to commit a battery or an unlawful act that places another person in reasonable apprehension of receiving an immediate battery. *People v Grant*, 211 Mich App 200, 202; 535 NW2d 581 (1995).

Defendant struck complainant with a broom handle. Complainant testified that the broom handle had a metal piece attached to it, and that when defendant approached him he turned his back to defendant in an attempt to avoid being hit on the chest. This evidence

supported an inference that complainant feared an immediate battery. *Vaughn, supra*. The evidence, viewed in a light most favorable to the prosecution, supported defendant's conviction. *Petrella, supra*.

Second, defendant argues that he is entitled to resentencing because his sentence of five years' probation was disproportionate to his circumstances and those of the offense. *People v Milbourn*, 435 Mich 630, 636; 461 NW2d 1 (1990). We disagree. The trial court was required to impose a minimum term within the guidelines of five to twenty-three months or an intermediate sanction, unless it found on the record that substantial and compelling reasons existed to depart from the guidelines. A five-year term of probation is an intermediate sanction, MCL 769.31(b)(ii), and was authorized by MCL 769.34(4)(d)(ii) and MCL 771.2(1). Moreover, defendant's failure to argue how his sentence is disproportionate waives the issue on appeal. *People v Hill*, 221 Mich App 391, 397; 561 NW2d 862 (1997).

Affirmed.

/s/ Jane E. Markey
/s/ Kurtis T. Wilder
/s/ Patrick M. Meter