

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JEROME R. WILLIAMS,

Defendant-Appellant.

UNPUBLISHED

November 29, 2005

No. 256437

Wayne Circuit Court

LC No. 01-000227

Before: Whitbeck, C.J., and Saad and O'Connell, JJ.

PER CURIAM.

Defendant appeals as of right his jury trial convictions for second-degree murder, MCL 750.317, felon in possession of a firearm, MCL 750.224f, assault with intent to do great bodily harm, MCL 750.84, and possession of a firearm during the commission of a felony, MCL 750.227b. Defendant was sentenced as a second habitual offender, MCL 769.10, to 485 to 720 months in prison for the second-degree murder conviction, 22 to 90 months in prison for the felon in possession of a firearm conviction, 70 to 180 months for the assault with intent to do great bodily harm conviction, and two years in prison for the felony-firearm conviction. We affirm, but remand for an amendment to the sentencing order.

This case arose when the murder victim pulled his car up to the curb in front of an apartment building where defendant's mother lived and called out for defendant. Defendant poked his head out of the second story window and engaged the murder victim in conversation while the murder victim's cousin sat in the passenger seat. Defendant eventually came down from the second-floor apartment and approached the car visibly armed with a chrome pistol. He crouched down at the driver's-side window, which was nearest to the curb, and resumed his conversation with the murder victim. After a short discussion about a previous shooting, defendant stood up and said, "but you know what, man," pulled out his pistol, stepped back onto the curb, and started firing at the driver. Defendant killed the driver. The passenger was shot four times in the arm and once in the leg before he was able to escape the car and get help.

Defendant says there was insufficient evidence to allow the first-degree murder charge to be submitted to the jury. The elements of first-degree murder are "that the defendant intentionally killed the victim and that the act of killing was premeditated and deliberate." *People v Anderson*, 209 Mich App 527, 537; 531 NW2d 780 (1995). In this case, defendant was positively identified as the shooter, and there can be no doubt of his intent to kill the driver. Regarding premeditation and deliberation, a jury could reasonably interpret defendant's

possession of the pistol when he came out of the apartment building and his words just before pulling the trigger as evidence that defendant considered murdering the driver before the conversation on the street began. Defendant also had time to deliberate as he withdrew from the relatively calm conversation, pulled his pistol from his waistband, and stepped back onto the curb for a better shot at the victim's vital organs. *People v Coddington*, 188 Mich App 584, 600; 470 NW2d 478 (1991). Because the first-degree murder charge had sufficient factual support, defendant's argument lacks merit. *Id.* at 601.

Defendant also contends that the trial court erred in denying his motion to sever the trials for felon in possession and murder, causing the jury to be predisposed against defendant as a convicted felon. We disagree. In *People v Mayfield*, 221 Mich App 656, 659-660; 562 NW2d 272 (1997), we held that a charge of felon-in-possession may be tried together with other felonies arising out of the same transaction, but added that a defendant should avail himself of certain safeguards against unfair prejudice. The safeguards enumerated included stipulating to the conviction and a limiting instruction requiring the jury to give each count separate consideration. *Id.* Here, the trial court employed these safeguards to minimize any prejudice, and accordingly the trial court did not abuse its discretion when it denied defendant's severance motion. *People v Duranseau*, 221 Mich App 204, 208; 561 NW2d 111 (1997).

Also, defendant claims that he is entitled to resentencing because the trial judge increased the statutory sentencing guidelines range based on facts not proven to a jury beyond a reasonable doubt, in violation of *Blakely v Washington*, 542 US 296; 124 S Ct 2531; 159 L Ed 2d 403 (2004). However, defendant failed to preserve this issue, and thus we will not reverse his conviction unless we find plain error that affected defendant's substantial rights. *People v Carines*, 460 Mich 750, 763-764; 597 NW2d 130 (1999). In *People v Claypool*, 470 Mich 715, 730 n 14; 684 NW2d 278 (2004), our Supreme Court determined that *Blakely*, *supra*, does not apply to Michigan's indeterminate sentencing structure. Therefore, we do not find any plain error. Also, because trial counsel had no valid *Blakely* objection at the time of sentencing, we do not find that defendant was deprived of effective assistance of counsel for trial counsel's failure to object on these grounds.

Defendant also maintains that his minimum sentence for the second-degree murder conviction must be corrected, because it exceeds two-thirds of the maximum sentence imposed. We agree, and in accordance with *People v Thomas*, 447 Mich 390, 394; 523 NW2d 215 (1994), we remand for reduction of defendant's second-degree murder sentence's 485-month minimum term to 480 months. This five-month reduction in the minimum sentence will bring the second-degree murder conviction in line with *Thomas*, *supra*.

Remanded for the ministerial task of reducing the second-degree murder sentence's minimum term by five months. Affirmed in all other respects. We do not retain jurisdiction.

/s/ William C. Whitbeck
/s/ Henry William Saad
/s/ Peter D. O'Connell