

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DAVID ESCOBAR ESPARZA,

Defendant-Appellant.

UNPUBLISHED

February 7, 2008

No. 275662

Saginaw Circuit Court

LC No. 06-027633-FC

Before: Talbot, P.J., and Cavanagh and Zahra, JJ.

PER CURIAM.

Defendant appeals as of right from his sentence of five to 15 years imposed on his plea-based conviction of voluntary manslaughter, MCL 750.321. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant killed an acquaintance, Bla Sosa, on March 13, 1982. He evaded police until early 2006, living undetected in Mexico and the United States during that time. Defendant and Sosa apparently fought over the proceeds defendant received from a leg injury he sustained in an accident. Defendant stabbed Sosa in the chest, severing an artery. At his plea hearing, defendant admitted only that he stabbed Sosa “because he wanted to take my money away.” Defendant stated that he knew that Sosa had been injured, but that he did not call an ambulance. In his version of the offense in the presentence information report (PSIR), defendant claimed that the two were drinking throughout the day, and that Sosa first assaulted him and threatened to kill him. The medical examiner who prepared Sosa’s autopsy report testified that Sosa had a blood alcohol level of .31% at the time of death, and that without treatment, Sosa would have died in approximately 20 minutes.

Defendant first appears to claim that his sentence was disproportionate. However, he also argues that the trial court clearly erred in utilizing the legislative sentencing guidelines in determining a proper sentence, when the judicial guidelines applied to this case. He then argues that the trial court erred when it imposed a sentence that would have been outside the legislative guidelines without having an objective and verifiable reason to do so.

Defendant is incorrect in his underlying assumption that any sentencing guidelines apply here. In 1983, our Supreme Court “crafted judicial sentencing guidelines and promulgated” them pursuant to Administrative Order (AO) No. 1983-3, 417 Mich cxxi (1983). *People v Babcock*, 469 Mich 247, 254; 666 NW2d 231 (2003). Under that order, beginning on May 1,

1983, judges were “invited” to use the guidelines, but were not required to do so. AO 1983-3; *People v Potts*, 436 Mich 295, 298; 461 NW2d 647 (1990). The judicial sentencing guidelines became mandatory pursuant to Administrative Order No. 1984-1, 418 Mich lxxx (1984), commencing on March 1, 1984. See *Potts, supra* at 298-299. There were no guidelines in place, mandatory or optional, in 1982. Consequently, we find defendant's contention that the trial court should have scored the judicial guidelines to be without merit. Instead, we find that the trial court's duty was to impose a sentence that is proportionate to the seriousness of the circumstances surrounding the offense and the offender. *People v Milbourn*, 435 Mich 630, 636, 668-670; 461 NW2d 1 (1990). We review issues of sentence proportionality for an abuse of discretion. *Id.* at 653-654.

Defendant cannot demonstrate that his sentence is disproportionate. Defendant's crime was a serious, violent offense. Despite defendant's claim on appeal that he committed the crime in self-defense, he did not pursue this defense at a trial, and maintained only during his plea that he stabbed Sosa “because [Sosa] wanted to take [defendant's] money away.” And despite the fact that defendant contends that he had no legal duty to help Sosa once he had been injured, his failure to do so when the coroner testified that defendant's assistance could have saved Sosa undermines defendant's claim that he was the mere victim of Sosa's assault rather than his deliberate killer. While there is evidence that defendant may have been drinking, there is none to suggest that he was so intoxicated that he could not form the requisite intent to kill.

The sentence is also proportionate to defendant as an offender. Defendant admitted to one prior drunk driving offense as a teenager, but has no other prior criminal convictions. However, according to the PSIR, as an illegal immigrant for most of his life, and on the run for over 20 years, defendant has acquired numerous aliases, and apparently has three Social Security numbers. He also admitted to currently being married to two women. Defendant's prior history, while certainly unusual, is telling concerning his “inability to conform his conduct to the laws of society,” and supports the trial court's decision. See *People v Hansford*, 454 Mich 320, 326; 562 NW2d 460 (1997). Under the circumstances, we find that the trial court imposed a proportionate sentence.

Affirmed.

/s/ Michael J. Talbot
/s/ Mark J. Cavanagh
/s/ Brian K. Zahra