

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

GARRY JONES,

Defendant-Appellant.

UNPUBLISHED

December 23, 2008

No. 281464

Wayne Circuit Court

LC No. 07-007661-01

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

GARRY JONES,

Defendant-Appellant.

No. 281465

Wayne Circuit Court

LC No. 07-007660-01

Before: Cavanagh, P.J., and Jansen and Meter, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of two counts of armed robbery, MCL 750.529, two counts of felon in possession of a firearm (second offense), MCL 750.224f, and two counts of possession of a firearm during the commission of a felony, MCL 750.227b. He was sentenced as an habitual offender, fourth offense, MCL 769.12, to concurrent prison terms of 240 to 420 months for each of the robbery and felon in possession convictions, to be served consecutive to concurrent five-year terms of imprisonment for the felony-firearm convictions. He appeals as of right. We affirm. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

I. Basic Facts

Defendant was convicted of committing two separate armed robberies of the complainant, one on June 3, 2006, and another on June 21, 2006.¹ The principal evidence against defendant was the complainant's testimony. The complainant knew defendant and indicated that they had sold drugs together. The complainant testified that on June 3, 2006, defendant called his cell phone and requested \$100. He told defendant that he would give him \$100. Later that day, the complainant was driving a friend's Lexis when he saw defendant and stopped to give defendant the money. Defendant pulled a silver-gray semi-automatic handgun and said, "Give me all your sh*t." In turn, the complainant removed his jewelry, eyeglasses, and clothing. As he was standing naked, a second man, wearing a mask, came from the side of a house and collected his property at defendant's direction. Defendant and the unidentified man got into the Lexis and sped away; the keys had been left in the ignition. The complainant ran to a home where a man gave him jeans and a shirt and allowed him to use the phone. A friend drove the complainant home and his wife later drove him to the police station. The complainant further testified that on June 21, 2006, he arrived home after midnight and was walking up the steps to his front porch when defendant approached him, pointed a gun at him, and demanded his money. The complainant threw \$600 or \$700 on the steps, went into his house, and reported the robbery to the police the following morning.

II. Effective Assistance of Counsel

Defendant argues that defense counsel was ineffective for failing to call three witnesses. Because defendant failed to raise this issue in a motion for a new trial or request for an evidentiary hearing, this Court's review is limited to mistakes apparent on the record. See *People v Ginther*, 390 Mich 436, 443; 212 NW2d 922 (1973); *People v Sabin (On Second Remand)*, 242 Mich App 656, 658-659; 620 NW2d 19 (2000). Effective assistance of counsel is presumed and the defendant bears a heavy burden of proving otherwise. *People v Pickens*, 446 Mich 298, 302-303; 521 NW2d 797 (1994); *People v Effinger*, 212 Mich App 67, 69; 536 NW2d 809 (1995). To establish ineffective assistance of counsel, defendant must show that counsel's performance fell below an objective standard of reasonableness, and that there is a reasonable probability that the result of the proceeding would have been different but for counsel's error. *People v Frazier*, 478 Mich 231, 243; 733 NW2d 713 (2007).

Defendant claims that defense counsel should have called two men who lived in the home where the complainant allegedly ran following the first robbery to rebut the complainant's testimony that he arrived at their home naked, and should have also called the mother of defendant's child who allegedly would have testified that defendant was home at the time of the second robbery. Defendant has not provided witness affidavits for these proposed witnesses, or identified any evidence of record establishing that they could have provided testimony favorable to the defense that may have affected the outcome of trial. Defendant's unsupported assertion

¹ For the June 3, 2006, offense, defendant was charged in LC No. 07-007661-01 with armed robbery, carjacking, felony-firearm, and felon in possession of a firearm. For the June 21, 2006, offense, defendant was charged in LC No. 07-007660-01 with armed robbery, felony-firearm, and felon in possession of a firearm. He was acquitted of carjacking, but found guilty of the other six counts.

that the witnesses would have supported his defense is insufficient to demonstrate that he was deprived of a substantial defense. *In re Ayres*, 239 Mich App 8, 22; 608 NW2d 132 (1999). Consequently, this claim does not warrant reversal.

III. Sufficiency of the Evidence

Defendant argues that the evidence was insufficient to sustain his convictions because the complainant's testimony was not credible. When ascertaining whether sufficient evidence was presented at trial to support a conviction, this Court must view the evidence 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. *People v Wolfe*, 440 Mich 508, 515; 489 NW2d 748 (1992), amended 441 Mich 1201 (1992). Circumstantial evidence and reasonable inferences arising from the evidence can constitute satisfactory proof of the elements of the crime. *People v Truong (After Remand)*, 218 Mich App 325, 337; 553 NW2d 692 (1996). All conflicts in the evidence must be resolved in favor of the prosecution. *People v Terry*, 224 Mich App 447, 452; 569 NW2d 641 (1997).

Defendant does not challenge the individual elements of the offenses.² Rather, he argues that the evidence was insufficient because the complainant was not credible and there were no eyewitnesses to corroborate his testimony. This argument requires this Court to ignore the complainant's testimony and resolve credibility issues anew on appeal. It is well established that absent compelling circumstances, which are not present here, the credibility of witnesses is for the jury to determine. See *People v Lemmon*, 456 Mich 625, 642; 576 NW2d 129 (1998), and *Wolfe*, *supra* at 514. Furthermore, contrary to what defendant suggests, there is no requirement that eyewitnesses corroborate a complainant's testimony. That argument concerns the weight of evidence, which is for the jury to decide. *Id.* The complainant's testimony identifying defendant as the perpetrator, viewed in a light most favorable to the prosecution, was sufficient to sustain defendant's convictions.

IV. Sentence

Defendant's last argument is that he is entitled to resentencing because his sentences for armed robbery and felon in possession are disproportionate and constitute cruel and unusual punishment, contrary to US Const, Am VIII, and Const 1963, art 1, § 16. Defendant was sentenced near the middle of the sentencing guidelines range of 126 to 420 months. Although MCL 769.34(10) provides that a sentence within the guidelines range must be affirmed on appeal absent an error in the scoring of the guidelines or reliance on inaccurate information in determining the sentence, neither of which is alleged to have occurred here, this limitation on

² The elements of armed robbery are: (1) an assault, (2) a felonious taking of property from the victim's presence or person, (3) while the defendant is armed with a weapon described in the statute. *People v Rodgers*, 248 Mich App 702, 707; 645 NW2d 294 (2001). The elements of felon in possession of a firearm include a previous felony conviction and possession of a firearm. MCL 750.224f; *People v Perkins*, 473 Mich 626, 629-631; 703 NW2d 448 (2005). "The elements of felony-firearm are that the defendant possessed a firearm during the commission of, or the attempt to commit, a felony." *People v Avant*, 235 Mich App 499, 505; 597 NW2d 864 (1999).

review is not applicable to claims of constitutional error. *People v Conley*, 270 Mich App 301, 316; 715 NW2d 377 (2006). But a sentence within the guidelines range is presumptively proportionate, *People v Broden*, 428 Mich 343, 354-355; 408 NW2d 789 (1987), and a sentence that is proportionate is not cruel or unusual punishment, *People v Terry*, 224 Mich App 447, 456; 569 NW2d 641 (1997). Defendant argues that his sentences are cruel and unusual because he was denied the effective assistance of counsel and because the evidence of his guilt was questionable. However, these claims relate only to the validity of defendant's convictions, not his sentences. Furthermore, as previously indicated, defendant's convictions were supported by sufficient evidence and defendant has not demonstrated that he was denied the effective assistance of counsel. Therefore, defendant has failed to overcome the presumptive proportionality of his sentences and, accordingly, his sentences do not constitute cruel or unusual punishment. Therefore, we affirm his sentences.

Affirmed.

/s/ Mark J. Cavanagh

/s/ Kathleen Jansen

/s/ Patrick M. Meter