

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

KERRY TERRILL RODGERS,

Defendant-Appellant.

UNPUBLISHED

February 15, 2011

No. 295364

Oakland Circuit Court

LC No. 2009-225798-FH

Before: WHITBECK, P.J., and O'CONNELL and WILDER, JJ.

MEMORANDUM.

Defendant was convicted by a jury of unarmed robbery, MCL 750.530, and was sentenced as a third habitual offender, MCL 769.11, to 41 months to 30 years in prison. Defendant appeals as of right. We affirm. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

Defendant first argues that there was insufficient evidence to convict him of unarmed robbery.

This Court reviews de novo a claim of insufficient evidence, *People v Lueth*, 253 Mich App 670, 680; 660 NW2d 322 (2002), viewing the evidence in the light most favorable to the prosecution to determine whether a rational trier of fact could find that the essential elements of the crime were proven beyond a reasonable doubt, *People v Bulls*, 262 Mich App 618, 623; 687 NW2d 159 (2004). In reviewing the sufficiency of the evidence, this Court must not interfere with the jury's role as the sole judge of the facts. *People v Hardiman*, 466 Mich 417, 431; 646 NW2d 158 (2002). [*People v Meshell*, 265 Mich App 616, 619; 696 NW2d 754 (2005)].

MCL 750.530, the unarmed robbery statute, provides:

(1) A person who, in the course of committing a larceny of any money or other property that may be the subject of larceny, uses force or violence against any person who is present, or who assaults or puts the person in fear, is guilty of a felony punishable by imprisonment for not more than 15 years.

(2) As used in this section, “in the course of committing a larceny” includes acts that occur in an attempt to commit the larceny, or during commission of the larceny, or in flight or attempted flight after the commission of the larceny, or in an attempt to retain possession of the property.

Complainant’s testimony established that defendant took an envelope containing \$551 while she was present and that, during a scuffle that ensued after he took the envelope, he grabbed her by the hair, slammed her on the bed, and tried to choke her. This evidence was more than sufficient to establish the elements of unarmed robbery. The essence of defendant’s challenge to the sufficiency of the evidence is that complainant was not credible. However, “[q]uestions of credibility are left to the trier of fact and will not be resolved anew by this Court.” *People v Avant*, 235 Mich App 499, 506; 597 NW2d 864 (1999). It was within the jury’s province to deem complainant credible.

Defendant next argues that his sentence of 41 months was cruel and unusual when considered in light of “the purported complainant” and the quality of the evidence. Our review of this unpreserved constitutional issue is for plain error. *People v Conley*, 270 Mich App 301, 312; 715 NW2d 377 (2006). The proofs in this case were not deficient. Moreover, a sentence within the minimum statutory guidelines range is presumptively proportionate, and a proportionate sentence is not cruel or unusual. *People v Powell*, 278 Mich App 318, 323; 750 NW2d 607 (2008). Nothing in defendant’s sentence was out of the ordinary for a third habitual offender conviction, as his sentence was in the middle of the guidelines range of 29 to 85 months. Thus the record fails to show that defendant’s sentence was cruel and unusual.

Affirmed.

/s/ William C. Whitbeck
/s/ Peter D. O’Connell
/s/ Kurtis T. Wilder