

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JAMAR DESHAWN ALEXANDER,

Defendant-Appellant.

UNPUBLISHED

October 22, 2020

No. 349551¹

Wayne Circuit Court

LC No. 16-002346-01-FC

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JAMAR DESHAWN ALEXANDER,

Defendant-Appellant.

No. 349592

Wayne Circuit Court

LC No. 16-002345-01-FC

Before: METER, P.J., and SHAPIRO and RIORDAN, JJ.

PER CURIAM.

In Docket No. 349551, defendant appeals as of right his jury trial convictions of armed robbery, MCL 750.529, and possession of a firearm during the commission of a felony (felony-firearm), MCL 750.227b(1). Defendant was sentenced to 85 months to 20 years of imprisonment for his armed robbery conviction and a consecutive two years of imprisonment for his felony-firearm conviction.

In Docket No. 349592, defendant appeals as of right his jury trial convictions of armed

¹ This Court has consolidated Docket Nos. 349551 and 349592. *People v Alexander*, unpublished order of the Court of Appeals, entered July 11, 2019 (Docket Nos. 349551, 349592).

robbery, MCL 750.529, larceny from a motor vehicle, MCL 750.356a(1), and felony-firearm, MCL 750.227b(1). Defendant was sentenced to 85 months to 20 years of imprisonment for his armed robbery conviction, 40 months to 60 months of imprisonment for his larceny from a motor vehicle conviction, and a consecutive two years of imprisonment for his felony-firearm conviction. On appeal, defendant argues his sentences were unreasonable and disproportionate. We affirm.

I. FACTS & PROCEDURAL HISTORY

This case arises from two separate armed robberies of two pizza-delivery employees. Defendant acted in concert with codefendant, Ronald Danier Gaines, to rob two pizza deliverymen after defendant called in orders for delivery. *People v Alexander*, unpublished per curiam opinion of the Court of Appeals, issued November 28, 2017 (Docket Nos. 333896, 334949), pp 1-2. During each robbery, defendant approached the victim with a gun and demanded the victim's money. *Id.*

Defendant appealed his convictions and sentences, arguing ineffective assistance of counsel and requesting resentencing because the trial court wrongly engaged in judicial fact-finding to score the offense variables (OVs). We affirmed defendant's convictions, but remanded for resentencing. *Id.* at 2-4. On remand, defendant argued that his original minimum sentence of 96 months for each armed robbery conviction exceeded the applicable guidelines sentencing range of 85 months.

At resentencing, defendant's properly calculated sentencing guidelines range was 51 to 85 months. The prosecution requested a sentence above the guidelines, citing defendant's accumulation of offenses while incarcerated, noting defendant accumulated 10 misconducts while incarcerated, including a felony conviction for assaulting a prison employee. Defendant requested a minimum sentence at the lower end of the range, stating it would sufficiently deter and punish his conduct and also allow him to return to his daughter. Defendant noted the additional offenses occurred when he was first incarcerated in high-level security and he had not recently accumulated any additional offenses. The trial court sentenced defendant within the guidelines range to 85 months to 20 years of imprisonment for each of his armed robbery convictions, 40 months to 60 months of imprisonment for his larceny with a motor vehicle conviction, and two years of imprisonment for each of his felony-firearm convictions.

II. ANALYSIS

Defendant argues the trial court's sentence of a minimum 85 months in prison for his armed robbery convictions was disproportionate and unreasonable. We disagree.

We review whether a trial court properly imposed a sentence that was proportionate to the offender and offense for an abuse of discretion. *People v Steanhouse*, 500 Mich 453, 459-460; 902 NW2d 327 (2017). A trial court abuses its discretion when the sentence imposed by the trial court is disproportionate to the seriousness of the circumstances involving the offense and the offender. *Id.* at 636. If the trial court selects a sentence that falls within the range recommended under the advisory guidelines, that sentence is presumptively proportionate. *People v Milbourn*, 435 Mich 630, 658; 461 NW2d 1 (1990), abrogated in part on other grounds *Steanhouse*, 500 Mich at 474-475. We must affirm a sentence that falls within the recommended sentencing range absent

an error in scoring or reliance on inaccurate information. *People v Schrauben*, 314 Mich App 181, 196 n 1; 886 NW2d 173 (2016). If there is a legislatively imposed mandatory minimum sentence, the trial court must apply it. MCL 769.34(2)(a) and (5); *People v Wilcox*, 486 Mich 60, 65; 781 NW2d 784 (2010).

The trial court sentenced defendant within the applicable guidelines range to a minimum 85 months of imprisonment for his armed robbery convictions. Defendant does not assert there was an error in scoring or that the trial court relied on inaccurate information when sentencing him. Therefore, we must affirm defendant's sentence under MCL 769.34(10).

Even if we were not required to affirm defendant's sentence under MCL 769.34(10), we conclude the trial court's minimum sentence was not unreasonable or disproportionate. "The principle of proportionality requires sentences imposed by the trial court to be proportionate to the seriousness of the circumstances surrounding the offense and the offender . . . , not whether it departs from or adheres to the guidelines' recommended range." *Steanhouse*, 500 Mich at 474-475 (quotation marks and citations omitted). The trial court must articulate its reasons for imposing the sentence on the record at the time of sentencing; it is, however, sufficient for the trial court to rely—expressly or impliedly—on the sentencing guidelines. *People v Conley*, 270 Mich App 301, 312-313; 715 NW2d 377 (2006). The reviewing court can consider additional factors, including defendant's conduct during the criminal transaction that was not part of the offense. *People v McGraw*, 484 Mich 120, 129; 771 NW2d 655 (2009).

The trial court expressly articulated its reasons for imposing defendant's sentence for his armed robbery convictions at the resentencing hearing. It is clear from the record that the trial court relied on the sentencing guidelines in its decision when asking defendant if he reviewed the PSIR. In response, defendant requested that the trial court sentence him at the low end of the guidelines and also amend his credit for time served as per the trial court's previous agreement at the original sentencing. The prosecutor pointed to a number of offenses defendant committed while incarcerated and asked the trial court to again impose the previous sentence of 94 months, which exceeded the sentencing guidelines range. Before sentencing defendant, the trial court indicated its review of the PSIR, sentencing guidelines, this Court's remand order, defendant's posttrial conduct, and the advisory nature of the sentencing guidelines. The trial court noted that although defendant engaged in misconduct while incarcerated, that conduct occurred when he "was first institutionalized" and he, "in recent times," showed "elements of rehabilitation" Moreover, the trial expressly stated that a "sentence within the guidelines was appropriate, although it is a recommendation and not mandatory." All of these comments reflect clear and articulated reasoning for imposing defendant's sentence.

Defendant's sentence is within the guidelines range, and therefore, it is presumptively proportionate. *Milbourn*, 435 Mich at 658. Defendant argues, however, his sentence was disproportionate because it was greater than that of his codefendant, Gaines, for the same offense. Initially, we note that defendant's premise that his sentence should be comparable to that of his codefendant lacks merit given the recognition that "the proper approach to sentencing is to favor individualized sentencing for every defendant." *People v Arnold*, 328 Mich App 592, 612; 939 NW2d 690 (2019). Regardless, defendant contends his sentence was disproportionate in comparison to that of his codefendant because defendant had no prior criminal history, while

Gaines had a prior criminal history.²

We review “a defendant’s sentence to determine if it was proportionate to the seriousness of the circumstances surrounding the offense and the offender,” and not by comparing defendant’s sentence to sentences for other crimes. *People v Knapp*, 244 Mich App 361, 389-390; 624 NW2d 227 (2001). Under this principle, the sentence imposed should be made to fit the crime and the criminal. *People v Babcock*, 469 Mich 247, 262; 666 NW2d 231 (2003).

It would be inappropriate to compare sentences between defendant and Gaines when they acted differently during the crimes, and were charged differently. We also do not have Gaines’ sentencing information in the record, which also renders such comparisons inappropriate. Because it was defendant who lured both victims to the scene, brandished and threatened the victims with a gun, and took both victims’ property, the trial court could rationally conclude that defendant should receive a harsher sentence than Gaines, as the principal offender. Moreover, a review of the record does not indicate that the trial court based defendant’s sentence on Gaines’ sentence, but rather engaged in reasoned comparison and evaluation of the PSIR, sentencing guidelines, and the seriousness of the offenses. *Steanhouse*, 500 Mich at 472. While the trial court was not required to consider mitigating factors in its sentence, *People v Osby*, 291 Mich App 412, 416; 804 NW2d 903 (2011), the trial court properly used its discretion in considering such factors, including defendant’s behavior during incarceration and his lack of criminal history. Because sentencing must be proportional and tailored to the offender and the offense, defendant’s contention his sentences should be comparable or commensurate with his codefendant is without merit. *Babcock*, 469 Mich at 262. Defendant fails to establish that his within-guidelines sentences are either unreasonable or disproportionate.

III. CONCLUSION

Defendant’s within-guidelines sentences are not unreasonable or disproportionate. We affirm.

/s/ Patrick M. Meter
/s/ Douglas B. Shapiro
/s/ Michael J. Riordan

² Gaines received his sentences after pleading guilty.