

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JASON R. CREIGHTON,

Defendant-Appellant.

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UNPUBLISHED

July 30, 1996

No. 185272

LC No. 94-133797

Before: Neff, P.J., Fitzgerald and C. A. Nelson,\* JJ.

PER CURIAM.

Defendant appeals as of right from his jury trial convictions of second-degree murder, MCL 750.317; MSA 28.549, and possession of a firearm during the commission of a felony, MCL 750.227b; MSA 28.424(2). Defendant was sentenced to twenty-five to fifty years' imprisonment for the murder conviction and the mandatory two-year prison term for the felony-firearm conviction. We affirm.

First, defendant asserts that the prosecution presented insufficient evidence of malice to find him guilty of second-degree murder beyond a reasonable doubt. We disagree. In reviewing the sufficiency of the evidence, this Court must view the evidence in the light most favorable to the prosecution and determine whether a rational trier of fact could have found that the essential elements of the crime were proven beyond a reasonable doubt. *People v Hutner*, 209 Mich App 280, 282; 530 NW2d 174 (1995).

The elements of second-degree murder are: (1) that a death occurred, (2) that it was caused by the defendant, (3) that the killing was done with malice, and (4) without justification or excuse. *People v Lewis*, 168 Mich App 255, 268; 423 NW2d 637 (1988). Malice, the requisite mental state for murder, consists of the intent to kill, to cause great bodily harm, or to do an act in wanton and willful disregard of the likelihood that the natural tendency of such behavior is to cause death or great bodily harm. *Id.* at 270. Malice may be inferred from the facts and circumstances of the killing, and the jury

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\* Circuit judge, sitting on the Court of Appeals by assignment.

may properly infer malice from evidence that a defendant intentionally initiated a force likely to cause death or great bodily harm. *Id.* Specifically, malice may be inferred where a deadly weapon is used in the perpetration of the killing. *People v Jones*, 95 Mich App 390, 394; 290 NW2d 154 (1980).

Viewing the evidence in the light most favorable to the prosecution, we conclude that a rational trier of fact could find that the element of malice was established beyond a reasonable doubt on the basis of the prosecution witnesses' testimony that defendant reached out of the car window with a gun and fired one shot in the victim's direction, who was standing only a few feet away, as the car drove by. Moreover, defendant admitted to the other passengers in the car that he fired the gun, yet he maintains that he merely intended the shot to serve as a warning. The jury could have properly inferred malice from the fact that defendant intentionally fired a handgun from a moving vehicle, only a few feet away from a group of people. Sufficient evidence was presented to support defendant's conviction.

In addition, defendant contends that his twenty-five year minimum sentence for the second-degree murder conviction violates the principle of proportionality and, therefore, constituted an abuse of the trial court's discretion. We disagree. Provided permissible factors are considered in sentencing, appellate review is limited to whether the sentencing court abused its discretion. *People v Milbourn*, 435 Mich 630; 431 NW2d 1 (1990). A sentencing court abuses its discretion when it violates the principle of proportionality. *Id.* A sentence must be proportionate to the seriousness of the crime and the defendant's prior record. *Id.*

Sentences within the guidelines' range are presumptively proportionate. *People v Cotton*, 209 Mich App 82, 85; 530 NW2d 495 (1995). Defendant has failed to raise any mitigating circumstances that would overcome the presumption of proportionality and demonstrate that the court abused its discretion in its sentencing of defendant within the guidelines' range of ten to twenty-five years.

Although defendant contends that his youth presents an unusual circumstance, a sentencing court is not required to consider a defendant's age. *People v Piotrowski*, 211 Mich App 527, 532-533; 536 NW2d 293 (1995). Also, lack of a criminal record, despite defendant's arguments, does not constitute an unusual circumstance. *Id.* Nevertheless, at the time of this offense, defendant was on juvenile probation. Furthermore, contrary to defendant's assertions, because each sentence is proportionate, the cumulative effect of the sentences is irrelevant. *People v Clark*, 207 Mich App 500, 502; 526 NW2d 357 (1994).

Finally, the trial court appropriately considered the nature of the offense and defendant's lack of significant remorse in sentencing him. See *People v Houston*, 448 Mich 312, 323; 532 NW2d 508 (1995). Accordingly, we find no abuse of discretion in the sentence imposed.

Affirmed.

/s/ Janet T. Neff

/s/ E. Thomas Fitzgerald

/s/ Charles A. Nelson

