

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

SUAVE MINTER,

Defendant-Appellant.

UNPUBLISHED
October 13, 1998

No. 196706
Detroit Recorder's Court
LC No. 95-000840

Before: Murphy, P.J., and Gribbs and Gage, JJ.

PER CURIAM.

Defendant appeals as of right from his bench trial convictions for second-degree murder, MCL 750.317; MSA 28.549, assault with intent to rob while armed, MCL 750.89; MSA 28.284, and possession of a firearm during the commission of a felony, MCL 750.227b; MSA 28.424(2). The trial court sentenced defendant to a term of twenty-five to fifty years for the murder conviction and a concurrent term of twenty to forty years for the assault conviction, both to be served consecutively to a two-year term for the felony-firearm conviction. We affirm.

Defendant first contends that the trial court erred by conducting a bench trial without first acquiring from defendant a valid waiver of his right to a jury trial. We review for clear error the trial court's determination that defendant validly waived his right to a jury trial. *People v Leonard*, 224 Mich App 569, 595; 569 NW2d 663 (1997). MCR 6.402(B) explains the requirements for obtaining a defendant's valid waiver of his right to a jury trial as follows:

Before accepting a waiver, the court must advise the defendant in open court of the constitutional right to trial by jury. The court must also ascertain, by addressing the defendant personally, that the defendant understands the right and that the defendant voluntarily chooses to give up that right and to be tried by the court. A verbatim record must be made of the waiver proceeding.

Our review of the verbatim record of defendant's waiver reveals that the court complied with these requirements in every respect. Therefore, we conclude that the trial court properly ascertained that

defendant understood his right to have a jury trial and that defendant voluntarily waived that right. *People v Shields*, 200 Mich App 554, 560-561; 504 NW2d 711 (1993).

Second, defendant challenges the trial court's findings, arguing that the trial court erred in convicting him of second-degree murder when the court had found that the malice required for a first-degree felony murder conviction had not been established beyond a reasonable doubt. MCR 6.403 imposes the requirement that the court in a criminal bench trial "must find the facts specially, state separately its conclusions of law, and direct entry of the appropriate judgment. The court must state its findings and conclusions on the record." Generally, findings are sufficient when they establish that the court was aware of the relevant issues in the case and correctly applied the law. *People v Smith*, 211 Mich App 233, 235; 535 NW2d 248 (1995).

Although the trial court apparently misapprehended the law regarding the requirements for first-degree felony murder, the court's findings were sufficient to support defendant's second-degree murder conviction. Our review of the record indicates that the trial court did not clearly err in making its factual findings regarding defendant's fatal shooting of the victim during an armed robbery attempt, or in its conclusion in the context of finding defendant guilty of second-degree murder that "defendant knowingly created a very high risk of death or great bodily harm knowing that death or such harm was the likely result of his action." MCR 2.613(C). Therefore, the trial court properly applied the law regarding second-degree murder to the facts in concluding that defendant was guilty of second-degree murder. *People v Kemp*, 202 Mich App 318, 322; 508 NW2d 184 (1993).

Defendant notes correctly that the trial court's legal analysis regarding first-degree felony murder reflected some confusion. This Court has previously explained the malice requirement for a murder conviction as follows:

Malice is an essential element of any murder, whether the murder occurs in the course of a felony or otherwise. The element of malice required for statutory felony murder was redefined in [*People v*] *Aaron* [, 409 Mich 672; 299 NW2d 304 (1980),] to be the same as that required for second-degree murder: the intention to kill, the intention to do great bodily harm, or the wanton and wilful disregard of the likelihood that the natural tendency of the defendant's behavior is to cause death or great bodily harm. [*People v Flowers*, 191 Mich App 169, 176; 477 NW2d 473 (1991).]

Therefore, the trial court erred when it concluded that, "while the defendant intended to commit Assault With Intent To Rob While Armed, the Court does not find the malice and mens rea necessary for a finding of first degree murder" In light of defendant's wanton and wilful disregard of the likelihood that the natural tendency of his behavior was to cause death or great bodily harm, and the fact that defendant committed the murder in the course of an attempted armed robbery, the trial court should have found defendant guilty of first-degree felony murder. *People v Turner*, 213 Mich App 558, 565-566; 540 NW2d 728 (1995). The trial court's erroneous finding of law regarding first-degree felony murder prevented it from imposing on defendant the most severe penalty that his actions warranted. Because the trial court's error did not affect its factual findings or legal analysis regarding second-degree murder, and because defendant can allege no prejudice arising from the trial court's erroneous legal

analysis regarding first-degree felony murder, we conclude that the trial court's findings were sufficient, *People v Porter*, 169 Mich App 190, 194; 425 NW2d 514 (1988) (sufficient findings exist when appellate review would not be facilitated by requiring further explanation), and that neither reversal nor remand is called for. *People v Mateo*, 453 Mich 203, 212; 551 NW2d 891 (1996); MCR 2.613(A).¹

Finally, defendant claims that in sentencing him, the trial court failed to articulate any reasons for the sentences imposed. Regarding the murder sentence, the trial court noted that the guidelines were 120 to 300 months. The court then imposed a minimum sentence of 25 years, at the upper limit of the guidelines. When a sentence is within the guidelines, a court's reliance on the sentencing guidelines constitutes sufficient explanation to satisfy the articulation requirement. *People v Lawson*, 195 Mich App 76, 78; 489 NW2d 147 (1992). Although the court did not cite what the guidelines indicated for the armed robbery attempt conviction, the court had immediately prior to imposing sentence properly considered the nature and severity of the crime, *People v Hunter*, 176 Mich App 319, 321; 439 NW2d 334 (1989), the circumstances surrounding the crime, the statutory sentencing limits, and defendant's personal history, *People v Ross*, 145 Mich App 483, 495; 378 NW2d 517 (1985). Therefore, we conclude that the court sufficiently articulated the reasons for the sentences imposed. *People v Fleming*, 428 Mich 408, 428; 410 NW2d 266 (1987).

Affirmed.

/s/ William B. Murphy

/s/ Roman S. Gibbs

/s/ Hilda R. Gage

¹ Defendant also alleges that the trial court made insufficient findings to the extent that the court failed to address the issue of defendant's credibility. However, in light of defendant's decision on the record at trial not to testify, we conclude that this argument is completely without merit.