

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DWAYNE SYKES JR,

Defendant-Appellant.

UNPUBLISHED

June 20, 2024

No. 338435

Genesee Circuit Court

LC No. 15-036716-FC

ON REMAND

Before: K. F. KELLY, P.J., and RIORDAN and GADOLA, JJ.

PER CURIAM.

In 2017, defendant was convicted after a jury trial of assault with intent to do great bodily harm less than murder, MCL 750.84; armed robbery, MCL 750.529; carrying a concealed weapon (“CCW”), MCL 750.227; and possession of a firearm during the commission of a felony (“felony-firearm”), MCL 750.227b. Defendant was sentenced to concurrent prison terms of 80 to 120 months for the assault conviction, 210 to 480 months for the armed robbery conviction, and 40 to 60 months for the CCW conviction, to be served consecutive to a two-year term of imprisonment for the felony-firearm conviction. Defendant appealed by right and this Court affirmed defendant’s convictions. *People v Sykes*, unpublished per curiam opinion of the Court of Appeals, issued February 28, 2019 (Docket No. 338435).

Defendant filed an application for leave to appeal to our Supreme Court, challenging this Court’s decisions regarding his constitutional right to a speedy trial and his claims of evidentiary error. The Supreme Court held the application in abeyance pending its decision in *People v Bonds*, (Docket No. 163110). *People v Sykes*, 981 NW2d 30 (Mich, 2022). While defendant’s application for leave was held in abeyance, defendant was allowed to file a Standard 4 brief in the Supreme Court raising an additional issue challenging the proportionality of his sentence for armed robbery. *Id.* The Supreme Court ultimately denied leave in *Bonds*. *People v Bonds*, 987 NW2d 874 (Mich, 2023). In lieu of granting leave to appeal in this case, the Supreme Court remanded to this Court “for consideration of the defendant’s argument that his sentence was disproportionate under the

standard set forth in *People v Milbourn*, 435 Mich 630, 636 (1990).” *People v Sykes*, 513 Mich 885, 885 (2023). The Supreme Court denied leave to appeal in all other respects. *Id.*

I. FACTS

This Court’s prior opinion in defendant’s appeal of right provided the following summary of the facts underlying defendant’s convictions:

Defendant’s convictions arise from his alleged armed robbery and shooting of Anthony Mont. On September 24, 2014, at approximately 10:20 p.m., Mont stopped and made a purchase at a party store in Flint, Michigan. Surveillance video from inside the store captured Mont paying for his purchase at the counter while the suspect, later identified by Mont from a photo array as defendant, stood nearby, carrying a drawstring backpack and wearing black pants with a white stripe on the leg, a grey hooded sweatshirt, and a red hat. After Mont left the store and entered his car, surveillance footage captured the suspect approaching the driver’s side window of Mont’s car. Mont testified that the perpetrator never spoke but pointed a short-barreled revolver at him. Mont grabbed the gun, and the perpetrator shot him once in the face. Under the impression that he was being robbed, Mont threw his wallet out of the car window and drove himself to a nearby hospital. Mont survived the shooting but permanently lost vision in his left eye.

Less than two hours after the shooting, defendant was arrested in connection with an unrelated incident at the Corunna Road Bar, located approximately a quarter-mile away from the party store. The bartender, Jessica Bell, ejected defendant from the bar after he fell asleep and, upon being woken, became belligerent and refused to leave. Bell described defendant as wearing black pants, a grey sweatshirt, and red hat and carrying a backpack. Bell called 911 when she observed defendant outside the bar on surveillance video and suspected he was waving a gun in his hand. Responding officers found defendant in possession of a .38-caliber revolver that was missing its barrel. The gun contained two live rounds and one spent casing. It was later determined that bullet fragments recovered from Mont’s wounds were consistent with a .38- or .357-caliber round, either of which could have been fired from the gun recovered from defendant. Defendant was placed under arrest and booked for CCW, felony firearm, and possession of a stolen firearm, as the revolver had been reported stolen. However, defendant was charged only with CCW and was released from custody.

Defendant did not become a suspect in Mont’s shooting until December 2014, when police received information leading them to defendant’s sister, Annie Alexander, and defendant’s girlfriend, Haley Davis, both of whom identified defendant in the surveillance video from the party store. On December 3, 2014, defendant was arrested in connection with the shooting and was charged with assault with intent to do great bodily harm less than murder, armed robbery, CCW, and felony-firearm. [*Sykes*, unpub op at 1-2.]

On remand from our Supreme Court, defendant argues that his sentence of 210 to 480 months for armed robbery is unreasonable and disproportionate to the seriousness of the offense.

II. DISCUSSION

Defendant asserts our Supreme Court's decision in *People v Posey*, 512 Mich 317; 1 NW3d 101 (2023), demands resentencing in this case. Defendant contends his sentence is disproportionate because defendant had no prior felony convictions, and the circumstances did not justify a sentence at the top of the guidelines range. We disagree.

A. STANDARD OF REVIEW

A trial court's sentencing decision is reviewed for an abuse of discretion. *People v Boykin*, 510 Mich 171, 182; 987 NW2d 58 (2022). "An abuse-of-discretion standard recognizes that there may be more than one principled outcome and the trial court may not deviate from that principled range of outcomes." *Id.*, citing *People v Babcock*, 469 Mich 247, 269; 666 NW2d 231 (2003). Before *Posey*, appellate courts were required to affirm within-guidelines sentences unless there was an error in scoring the guidelines or the trial court relied on inaccurate information. *People v Schrauben*, 314 Mich App 181, 196; 886 NW2d 173 (2016), citing MCL 769.34(10). *Posey* held that appellate courts are no longer required to affirm within-guidelines sentences because the guidelines are advisory in all applications. *Posey*, 512 Mich at 351. Instead, sentences within the applicable sentencing guidelines range are reviewed for reasonableness. *Id.* Thus, "the proper inquiry when reviewing a sentence for reasonableness is whether the trial court abused its discretion by violating the 'principle of proportionality' set forth in *People v Milbourn*, 435 Mich 630, 636; 461 NW2d 1 (1999), 'which requires sentences imposed by the trial court to be proportionate to the seriousness of the circumstances surrounding the offense and the offender.'" *People v Steanhouse*, 500 Mich 453, 459-460; 902 NW2d 327 (2017).

B. ANALYSIS

The trial court calculated defendant's minimum sentencing guidelines range to be 126 to 210 months' imprisonment for the armed robbery conviction. Defendant was ultimately sentenced to serve 210 to 480 months' (17.5 to 40 years) imprisonment for the armed robbery conviction. Defendant asserts this sentence is unreasonable and disproportionate to the seriousness of the circumstances surrounding the offense and defendant as the offender.

The statutory sentencing guidelines were intended as an "aid to accomplish the purposes of proportionality...." *People v Dixon-Bey*, 321 Mich App 490, 524; 909 NW2d 458 (2017). While the sentencing guidelines are only advisory, they "remain a highly relevant consideration in a trial court's exercise of sentencing discretion." *People v Lockridge*, 498 Mich 358, 391; 870 NW2d 502 (2015). Thus, trial courts must consult the guidelines and take them into account when sentencing defendants. *Id.* As this Court has observed, the guidelines provide "objective factual guideposts that can assist sentencing courts in ensuring that the offenders with similar offense and offender characteristics receive substantially similar sentences." *Dixon-Bey*, 321 Mich App at 524, quoting *People v Smith*, 482 Mich 292, 309; 754 NW2d 284 (2008).

Under *Posey*, a challenge to a within-guidelines sentence is to be reviewed for reasonableness. *Posey*, 512 Mich at 352. The reasonableness review requires an appellate court to determine whether the sentence is proportionate to the seriousness of the circumstances surrounding the offense and offender. *Id.* at 326. A proportionate sentence considers “the reformation of the offender, the protection of society, the discipline of the offender, and the deterrence of others from committing the same offense.” *Boykin*, 510 Mich at 183 (citation omitted). There is a nonbinding presumption that a within-guidelines sentence is proportionate, and the defendant has the burden of proving that his or her within-guidelines sentence is disproportionate. *Posey*, 512 Mich at 359.

Applying these standards to this case, we find that defendant’s sentence was reasonable and proportionate. The sentencing guidelines recommended a minimum sentencing range of 126 to 210 months in prison for defendant’s armed robbery conviction, and defendant was sentenced to a minimum of 210 months’ imprisonment. Defendant does not argue that the circumstances surrounding the offense mitigate in favor of a lesser sentence. Instead, defendant asserts that his own circumstances at the time he committed the offense mitigate in favor of a lesser sentence. Specifically, defendant argues that his sentence is not proportionate because he had no prior felony convictions at the time of the offense, only misdemeanors. Also, defendant contends that his conduct was influenced by a history of alcohol abuse, and that he committed these offenses while under the influence of alcohol. Further, defendant argues the trial court sentenced defendant without considering his potential for rehabilitation.

The presentence investigation report detailed defendant’s minimal criminal history, and the sentencing guidelines account for a defendant’s criminal history. Indeed, prior record variables (PRVs) 1-6 account for a defendant’s prior felony, misdemeanor, and juvenile convictions. Although defendant emphasizes that he received the harshest possible sentence available under the guidelines, that only means that he received the harshest recommended sentence within the class of offenders with a like background who committed an offense of comparable seriousness. The mere fact that defendant did not have any prior felony convictions does not itself demonstrate that a sentence at the high end of the guidelines is disproportionate.

The trial court also considered defendant’s alcoholism when fashioning its sentence. Defense counsel talked about defendant’s alcoholism during allocution and noted that defendant was under the influence at the time he committed this robbery. The trial court acknowledged that, in the presentence investigation report, defendant admitted using alcohol from the age of fourteen, but he denied abusing alcohol. The trial court then stated,

It’s not about alcohol. This is about Mr. Sykes deciding to commit an armed robbery. That’s as plain and simple as it is. Armed robbery is a very dangerous endeavor. Once you decide to commit an armed robbery, anything can happen. It’s dangerous for everybody. And any sort of idea that, you know, you don’t intend a bad result, in my mind falls on deaf ears. That’s the nature of an armed robbery. That’s why it’s treated very seriously and a result like the one we have here is unfortunately par for the course.

The trial court believed that the gravity of the offense warranted a sentence at the very high end of the guidelines, and imposed a minimum sentence of 210 months in prison.

Furthermore, the trial court did not ignore defendant's rehabilitative potential at sentencing. The trial court acknowledged that defendant was only 23 years old, he had no felony convictions, and he had problems with alcohol. Defendant argues that his accomplishments and employment in prison demonstrate a strong potential for rehabilitation. However, the trial court could not have addressed defendant's conduct after he was sentenced, and any post-sentencing conduct is not a basis for concluding the trial court violated the principle of proportionality.

It is clear from the sentencing record that the trial court considered defendant's reformation potential, the protection of society, discipline, and deterrence, see *Boykin*, 510 Mich at 183, but ultimately found that the seriousness of the offense warranted a lengthy sentence. The trial court clearly articulated why defendant deserved a sentence at the top of the guidelines. Defendant decided to commit an armed robbery, discharged his firearm, and shot the victim in the face. The victim lived but sustained serious injury and permanent loss of vision in one eye. The victim spoke at the sentencing hearing and detailed how the quality of his life drastically diminished after this tragic incident. The victim had to undergo lengthy rehabilitation and ultimately lost his job. Considering the seriousness of the circumstances surrounding the offense and the offender, defendant's sentence is proportionate and reasonable. We affirm defendant's sentence.

Affirmed.

/s/ Kirsten Frank Kelly
/s/ Michael J. Riordan
/s/ Michael F. Gadola