

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

STEVEN JOSEPH LEPPER,

Defendant-Appellant.

UNPUBLISHED

November 24, 2020

No. 350757

Wayne Circuit Court

LC No. 14-011026-02-FC

Before: GLEICHER, P.J., and K. F. KELLY and SHAPIRO, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of two counts of carjacking, MCL 750.529a, two counts of assault with intent to murder (AWIM), MCL 750.83, three counts of felonious assault, MCL 750.82, intentional discharge of a firearm at a dwelling, MCL 750.234b, and possession of a firearm during the commission of a felony (felony-firearm), MCL 750.227b(1). We previously affirmed defendant's convictions but remanded for resentencing because the trial court made an error in scoring the offense variables. On remand, the trial court resentenced defendant for the carjacking convictions only, imposing a term of 160 to 400 months' imprisonment for each offense. Defendant appealed and we again remanded, directing the trial court to resentence defendant for his AWIM convictions. The trial court did so, sentencing defendant to 160 to 400 months' imprisonment for each count of AWIM. Defendant now appeals his AWIM sentences. We affirm.

I. BACKGROUND

This case arises from two separate carjacking incidents committed by defendant and two codefendants, Dan Bozeman and Roger Diepenhorst. We previously summarized the events underlying defendant's convictions:

In the first incident, involving victim Thomas Jackson, the defendants were successful in obtaining the victim's car. During that incident, one or more of the defendants fired gunshots at Jackson as he ran from the scene. In the second incident, committed approximately an hour after the first, one or more of the defendants fired gunshots at the intended victim, Lana Stanton, as she drove off,

and additional shots were fired at a neighbor, Starkeisha West, who was watching the attempted carjacking from her house. The three defendants were tried jointly, with defendant Lepper before one jury and defendants Bozeman and Diepenhorst before a second jury. [*People v Lepper (Lepper I)*, unpublished per curiam opinion of the Court of Appeals, issued December 13, 2016 (Docket Nos. 327490, 327604, 329411), pp 1-2.]

Defendant was originally sentenced to 200 months to 400 months' imprisonment for each of his carjacking convictions, 200 months to 400 months' imprisonment for each of his AWIM convictions, 2 to 4 years' imprisonment for each felonious assault conviction, and 5 to 10 years' imprisonment for his discharge of a firearm at a dwelling conviction, with those sentences being concurrent to one another but consecutive to a 2 year-sentence for felony-firearm.

In his first appeal, we affirmed defendant's convictions but remanded for resentencing because the trial court made errors in scoring the offense variables. *Lepper I*, unpub op, at 7. On remand, the recalculated minimum sentence guidelines range for defendant's carjacking convictions was 108 to 180 months. The trial court resentenced defendant to 160 months to 400 months' imprisonment for his carjacking convictions, with the remainder of defendant's sentences unchanged. Defendant appealed, arguing that the trial court erred by not resentencing him on his other convictions. We remanded for resentencing of defendant's sentences for AWIM because that offense is in the same crime classification as carjacking and so should have been scored under the sentencing guidelines. *People v Lepper (Lepper II)*, unpublished per curiam opinion of the Court of Appeals, issued December 13, 2018 (Docket Nos. 340552, 340643, 340644), p 4.

On the second remand, defendant's properly calculated sentencing guidelines range for AWIM was 135 to 225 months. At the resentencing hearing, defense counsel requested sentences for AWIM consistent with defendant's sentences for his carjacking convictions. The trial court deemed a reduction in the AWIM sentences was appropriate, ordering defendant to 160 months to 400 months' imprisonment for each of his AWIM convictions with the rest of his sentences unchanged.

II. ANALYSIS

Defendant argues that his AWIM sentences are disproportionate and violate the cruel or unusual punishment provisions of the federal and state constitutions. We disagree.¹

Sentences must adhere to the principle of proportionality, 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 Milbourn*, 435 Mich 630, 636; 461 NW2d 1 (1990). A sentence within the range recommended under the advisory guidelines is presumptively proportionate. See *People v Armisted*, 295 Mich App 32, 51; 811 NW2d 47 (2011). "In order to overcome the presumption that the sentence is proportionate, a defendant must present unusual

¹ We review for an abuse of discretion whether a trial court properly imposed a sentence that was proportionate to the offender and offense. See *People v Steanhouse*, 500 Mich 453, 459-460; 902 NW2d 327 (2017).

circumstances that would render the presumptively proportionate sentence disproportionate.” *People v Lee*, 243 Mich App 163, 187; 622 NW2d 71 (2000). See also *People v Steanhouse*, 322 Mich App 233, 257 n 3; 911 NW2d 253 (2017), rev’d in part on other grounds 504 Mich 969 (2019).

Defendant fails to present any unusual circumstances to show that his within-guidelines sentences for AWIM were disproportionate in light of the seriousness of the offenses. Defendant and his codefendants went on a seemingly random crime spree involving the attempted forceful taking of automobiles and the discharge of multiple firearms endangering the lives of several people. The jury specifically found that defendant acted with the intent to kill two people. Stanton testified that defendant began shooting at her car when he was only a few feet away. West, the neighbor who observed the attempted carjacking of Stanton, testified that defendant was within 10 feet when he shot at her while she was looking out her window. *Lepper I*, unpub op at 4. At the initial sentencing, the trial court described the defendants’ crimes as “absolutely horrific,” stating, “It’s incredible to me, given the recklessness and the carelessness with which you and your co-defendant’s [sic] acted, that no one was injured. That is amazing to me.”

The trial court also considered defendant’s background. At the first resentencing, the trial court noted defendant’s lack of adult criminal history and decided to impose a minimum sentence for the carjacking convictions 20 months less than the maximum-minimum sentence recommended by the guidelines. At the second resentencing, the court noted that the defendants were “young men”—defendant was 20 years old at the time of the offense—and “seemed to have strong potential,” before imposing sentences for AWIM consistent with the carjacking convictions.

In sum, the trial court considered the circumstances surrounding the offense and the offender and concluded that the guidelines provided a proportional sentence. Based on the record before us, we see no grounds to conclude that defendant’s within-guidelines sentences violate the principle of proportionality. Accordingly, we also reject defendant’s argument that his sentences violated his constitutional right to be free from cruel and unusual punishment. See *People v Bowling*, 299 Mich App 552, 558; 830 NW2d 800 (2013) (“A sentence within the guidelines range is presumptively proportionate, and a proportionate sentence is not cruel or unusual.”).

Affirmed.

/s/ Elizabeth L. Gleicher
/s/ Kirsten Frank Kelly
/s/ Douglas B. Shapiro