

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

MARVIN LEE FORD,

Defendant-Appellant.

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UNPUBLISHED

June 27, 1997

No. 186866

Genesee Circuit Court

LC No. 94-051506-FH

Before: Reilly, P.J., and Hood and Murphy, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of second-degree home invasion, MCL 750.110a(3); MSA 28.305(a)(3). Defendant was sentenced as an habitual offender, third offense, MCL 769.11; MSA 28.1083, to fourteen to thirty years' imprisonment. Defendant now appeals as of right. We affirm.

The evidence presented at trial indicates that on November 24, 1994, the door to Sharon Sidam's home was broken and her alarm went off. A neighbor testified that defendant looked like the young man who left the house soon afterwards. Sidam's television and VCR were found near the door, having been removed from an entertainment center. Defendant's fingerprint was found inside the house. At trial, defendant did not present any witnesses and defense counsel argued that the prosecution failed to establish that defendant was the person who broke into Sidam's house.

First, defendant argues that the trial court committed error that deprived him of a fair trial by giving improper jury instructions. Because defendant failed to object to any of the alleged errors, this Court will only review the issue for manifest injustice. *People v Van Dorsten*, 441 Mich 540, 544-545; 494 NW2d 737 (1993). We find that manifest injustice will not occur if we do not fully address the alleged errors.

Although the court erred in failing to define larceny in the instruction for second-degree home invasion, see *People v Raab*, 112 Mich App 430; 316 NW2d 446 (1982) and *People v Miller*, 35 Mich App 627; 192 NW2d 517 (1971), the unrefuted evidence established that the person who broke into Sidam's home intended to carry away items from the household.

Therefore, defendant was not prejudiced and any error was harmless. See *People v Woods*, 416 Mich 581, 600-601; 331 NW2d 707 (1982). Moreover, defendant's contention that the trial court erred in failing to instruct the jury that the prosecutor must prove the elements of "entering" and "occupancy" beyond a reasonable doubt is contradicted by the record. Finally, although the court may have told the jury that Sidam's house was an occupied dwelling, again, the unrefuted evidence established that it was. Given that the only basic and controlling disputed issue at trial was whether defendant was the person who broke into Sidam's house, the errors in the instruction were not prejudicial to defendant and do not require reversal.

Next, defendant argues that his minimum sentence of fourteen years was disproportionately harsh. We disagree. The proportionality of an habitual offender's sentence is reviewed under the "abuse of discretion" standard, but the guidelines have "no bearing" with regard to whether an abuse has occurred. *People v Edgett*, 220 Mich App 686, 694; 560 NW2d 360 (1996). When sentencing an habitual offender, a trial court does not abuse its discretion in giving a sentence within the statutory limits established by the Legislature when an habitual offender's underlying felony, in the context of his previous felonies, evidences that the defendant has an inability to conform his conduct to the laws of society. *People v Hansford (After Remand)*, \_\_ Mich \_\_; \_\_ NW2d \_\_ (Docket No. 104770, issued May 13, 1997, slip op p 6). In this case, defendant's maximum sentence of thirty years did not exceed the limit imposed on a third offense habitual offender under MCL 769.11; MSA 28.1083. In addition, defendant was paroled just one month prior to committing this offense and had three other convictions for home invasion or breaking and entering, including one committed the day after he committed this offense. Accordingly, defendant's criminal history and his clear inability to reform convince us that the trial court did not abuse its discretion in sentencing defendant.

Affirmed.

/s/ Maureen Pulte Reilly

/s/ Harold Hood

/s/ William B. Murphy