

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JOHN DAVID PRIMM,

Defendant-Appellant.

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UNPUBLISHED

January 9, 1998

No. 195618

Barry Circuit Court

LC No. 91-000024 FH

Before: MacKenzie, P.J., and Hood and Hoekstra, JJ.

MEMORANDUM.

Following a remand for resentencing in Docket No. 142742, defendant appeals as of right his ten- to twenty-year enhanced sentence as a fourth offender, MCL 769.12; MSA 28.1084, based on an underlying offense of receiving and concealing stolen property over \$100, MCL 750.535; MSA 28.803. This appeal is being decided without oral argument pursuant to MCR 7.214(E). We affirm.

Defendant correctly contends that using a mathematical formula to increase the sentence guidelines for the underlying offense in order to determine an appropriate guideline range for habitual offenders is inappropriate. *People v Edgett*, 220 Mich App 686; 560 NW2d 360 (1996). The assertion that the trial court relied on the presentence investigator's use of such formula in imposing sentence is not, however, supported by the record. In any event, alleged errors in using the sentence guidelines simply fail to present a cognizable basis for appellate relief. *People v Mitchell*, 454 Mich 145, 170 ff; 560 NW2d 600 (1997).

Appellate relief may be afforded only if the sentence imposed is disproportionate to the offense and the offender. Habitual offender sentences are reviewed for abuse of the trial court's sentencing discretion where, as here, the sentence is within statutory limits. *People v Hansford (After Remand)*, 454 Mich 320; 562 NW2d 460 (1997). An abuse of discretion occurs only when "no reasonable sentencer" would have found the facts of the case and the defendant's prior criminal record sufficient to justify the actual sentence imposed. *People v Merriweather*, 447 Mich 799, 807; 527 NW2d 460 (1994). Here, defendant could have been sentenced to life imprisonment, yet he received only a ten-

to twenty-year indeterminate sentence. No abuse of the trial court's sentencing discretion has been established. *People v Hansford, supra*.

Affirmed.

/s/ Barbara B. MacKenzie

/s/ Harold Hood

/s/ Joel P. Hoekstra