

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DONALD LEE CALDWELL,

Defendant-Appellant.

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UNPUBLISHED

March 3, 1998

No. 184586

Lenawee Circuit Court

LC No. 93-006016 FH

Before: Griffin, P.J., and Holbrook and Neff, JJ.

MEMORANDUM.

Following a jury trial at which defendant was originally convicted of operating a motor vehicle while under the influence of liquor, third conviction (OUIL-3), MCL 257.625(6)(d); MSA 9.2325(6)(d),<sup>1</sup> defendant was sentenced to sixty months' probation. Defendant subsequently pleaded guilty to violating his probation by drinking alcohol. The trial court sentenced defendant to thirty-six to sixty months' imprisonment with twelve days' credit for time served. Defendant now appeals, claiming that his sentence of thirty-six to sixty months is disproportionate to the offense and the offender. We affirm.

Defendant's underlying OUIL-3 conviction resulted from violating his probation on one of his prior OUIL convictions. As a condition of his probation, defendant was ordered not to possess or consume intoxicants. The trial court characterized this ban on intoxicants as a fundamental part of defendant's probation. However, six weeks after his release from jail for the prior probation violation, police were called to defendant's home due to a disturbance involving his former girlfriend. Defendant admitted that he had purchased a six-pack of beer that night and drank all six cans. At the plea hearing and sentencing, defense counsel argued that defendant suffered from bipolar manic depressive disease, which required that he take the medications Prozac and Lithium. Defense counsel asserted that defendant was unable to afford these appropriate medications and so attempted to treat himself with alcoholic beverages.

At sentencing, the trial court stated his familiarity with the case and defendant's history. He pointed out that the alcohol violation went to the "very heart and soul" of defendant's criminal behavior

and that defendant still had not accepted responsibility for his alcohol problem. The record before the trial court showed that a more lenient approach had not caused any significant changes in defendant's behavior, indicating that a more severe response was required. Defendant's three-year minimum sentence is not disproportionately severe in light of the circumstances surrounding him or his offense. *People v Milbourn*, 435 Mich 630, 635-636; 461 NW2d 1 (1990); *People v Leske*, 187 Mich App 153, 158; 466 NW2d 361 (1991).

Affirmed.

/s/ Richard Allen Griffin

/s/ Donald E. Holbrook, Jr.

/s/ Janet T. Neff

<sup>1</sup> Now MCL 257.625(7)(d); MSA 9.2325(7)(d).