

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

TRISHA LYNN ALCOCK,

Defendant-Appellant.

UNPUBLISHED
September 4, 1998

No. 207988
Saginaw Circuit Court
LC No. 94-9452-FH

ON REMAND

Before: Hood, P.J., and McDonald and Young, JJ.

MEMORANDUM.

Defendant was convicted following a jury trial of assault with intent to do great bodily harm less than murder, MCL 750.84; MSA 28.279, and conspiracy to commit aggravated assault, MCL 750.81a; MSA 28.276(1). Defendant was sentenced to 7 1/2 to 15 years' imprisonment for the conviction of assault with intent to do great bodily harm, reflecting enhancement based on a conviction of habitual offender, second offense, MCL 769.10; MSA 28.1082, and a concurrent term of 12 months' imprisonment for the conviction of conspiracy to commit aggravated assault.

Defendant appealed as of right. We affirmed her convictions, but remanded the case to the trial court for an articulation of the reasons for the sentence imposed on the assault conviction. *People v Alcock*, unpublished opinion per curiam of the Court of Appeals, issued July 15, 1997 (Docket No. 186905). We failed to retain jurisdiction. After the trial court articulated its reasons for imposing the sentence, defendant filed a claim of appeal, which was dismissed by this Court. Defendant then filed an application for leave to our Supreme Court. The Supreme Court remanded the case back to our Court for a review of whether defendant's sentence was proportionate. We have considered the supplemental briefs filed by the parties, and affirm the sentences.

A sentence must be proportionate to the seriousness of the circumstances surrounding the offense and the offender. *People v Milbourn*, 435 Mich 630, 635-636; 461 NW2d 1 (1990). It is therefore appropriate for the sentencing court to review the nature of the offense and the background of the offender. *Id.* at 651. In addition, because defendant was sentenced as an habitual offender, the sentencing guidelines are irrelevant and will not be considered by this Court

in reviewing defendant's sentence. *People v Edgett*, 220 Mich App 686, 694; 560 NW2d 360 (1996). Under the circumstances, we find that the sentence imposed was proportionate to the offense and the offender. *Milbourn, supra* at 636.

The evidence showed that defendant participated in a vicious attack on the victim, which resulted in serious injury. In addition, defendant had a prior criminal record and, the court had information before it that defendant was involved with a violent street gang that engaged in numerous criminal activities. The nature of the assault and defendant's prior criminal record were sufficient reasons for imposing the sentence. It was not disproportionate.

Affirmed.

/s/ Harold Hood

/s/ Gary R. McDonald

/s/ Robert P. Young, Jr.