

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JAMES A. AMMONS,

Defendant-Appellant.

UNPUBLISHED

September 15, 1998

No. 203126

Oakland Circuit Court

LC No. 97-150456 FC

Before: Whitbeck, P.J., McDonald and T. G. Hicks*, JJ.

MEMORANDUM.

Defendant appeals as of right his conviction for unarmed robbery, MCL 750.530; MSA 28.798, and habitual offender, fourth offense, MCL 769.12; MSA 28.1084, entered after a bench trial. We affirm. We decide this appeal without oral argument pursuant to MCR 7.214(E).

Defendant argues that his eight to twenty year sentence is disproportionate because it is the maximum sentence he could have received within the guidelines range for the underlying offense. The sentencing guidelines do not apply to a habitual offender sentence. *People v Hansford (After Remand)*, 454 Mich 320, 323; 562 NW2d 460 (1997). Nonetheless, the principle of proportionality announced in *People v Milbourn*, 435 Mich 630; 461 NW2d 1 (1990), applies to habitual offenders. *People v McFall*, 224 Mich App 403, 415; 569 NW2d 828 (1997). Given defendant's past record of offenses, his long standing drug problem, and the nature of the instant offense, there is no showing that the sentence was disproportionately severe or that the trial court abused its discretion in sentencing defendant. *Hansford, supra*.

Defendant also argues that the trial court erred in failing sua sponte to consider his drug intoxication as negating his ability to form the specific intent to commit a robbery. There is no merit to this claim where defendant testified that he intended to rob the Subway shop in order to get money for drugs. "The defense of intoxication will negate the specific intent element of the crime charged if the degree of intoxication is so great as to render the accused incapable of

* Circuit judge, sitting on the Court of Appeals by assignment.

entertaining the intent.” *People v King*, 210 Mich App 425, 428; 534 NW2d 534 (1995). By defendant’s own testimony, that was not the case here.

Affirmed.

/s/ William C. Whitbeck

/s/ Gary R. McDonald

/s/ Timothy G. Hicks