

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JOHN THOMAS BROWN,

Defendant-Appellant.

UNPUBLISHED

October 6, 1998

No. 200959

Saginaw Circuit Court

LC No. 96-012035 FC

Before: Bandstra, P.J., and Griffin and Young, Jr., JJ.

PER CURIAM.

Defendant appeals as of right his convictions for assault with intent to do great bodily harm less than murder, MCL 750.84; MSA 28.279, carrying a dangerous weapon with unlawful intent, MCL 750.226; MSA 28.423, malicious destruction of utility property, MCL 750.383a; MSA 28.615(1), two counts of malicious destruction of personal property under \$100, MCL 750.377a; MSA 28.609(1), malicious destruction of a building under \$100, MCL 750.380; MSA 28.612, and habitual offender, fourth offense, MCL 769.12; MSA 28.1084. These convictions stemmed from defendant's assault on a former girlfriend. We affirm defendant's conviction but remand for resentencing on the two malicious destruction of property under \$100 convictions.

Defendant first argues that the trial court erred by denying his motion for a directed verdict of acquittal on the charge of assault with intent to kill, asserting that the prosecution did not provide sufficient evidence of the requisite intent. We disagree. In reviewing the sufficiency of the evidence in a criminal case, this Court must view the evidence in a light most favorable to the prosecution and determine whether a rational trier of fact could find that the essential elements of the crime were proven beyond a reasonable doubt. *People v Hampton*, 407 Mich 354, 368; 285 NW2d 284 (1979). In the present case, there was sufficient evidence of the requisite intent on the record to justify the denial of defendant's motion for a directed verdict of acquittal on the assault with intent to kill charge. First, defendant used a deadly weapon, a large knife, in the commission of the assault. Second, immediately preceding the assault, defendant exclaimed, "I'm going to kill you." Third, defendant inflicted serious injuries upon his victim with the most serious being a two to two-and-one half inch deep chest wound.

Fourth, even after his victim began to bleed profusely, defendant continued the assault. This evidence was adequate for a rational trier of fact to find an intent to kill beyond a reasonable doubt.

Next, defendant argues that the trial court erred in sentencing defendant under the malicious destruction of property over \$100 provisions of the penal code when the information charged and the jury verdict form indicated that he was convicted of malicious destruction of property under \$100. It appears that at the sentencing hearing, the trial court grouped three of the malicious destruction of property counts (malicious destruction of utility property and two counts of malicious destruction of private property) together and sentenced defendant to ten to fifteen years for each count. The judgment of sentence, the presentence investigation report (“PSIR”), and the trial court at the sentencing hearing all referred to the two counts of malicious destruction of property as being the felony version that requires damage over \$100. See MCL 750.377a; MSA 28.609(1). However, defendant was charged with the misdemeanor version that applies when property damage is less than \$100. The prosecution concedes that the trial court erred when it sentenced defendant, and we remand for resentencing on those two convictions.

Finally, defendant argues that the trial court abused its discretion and imposed a disproportionately high sentence of imprisonment. We disagree. The imposition of a specific sentence is reviewed for an abuse of discretion. *People v Milbourn*, 435 Mich 630, 636; 461 NW2d 1 (1990). Although given discretion in sentencing matters, the trial court is required to impose a sentence that is proportionate to (1) the seriousness of the crime; and (2) the defendant’s prior record. *Id.* at 636, 650. The sentencing guidelines may not be considered in sentencing habitual offenders but the proportionality of these sentences are still reviewable for an abuse of discretion. *People v Hansford (After Remand)*, 454 Mich 320, 323-324; 562 NW2d 460 (1997). The Court in *Hansford* also stated:

We believe that 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 context of his previous felonies, evidences that the defendant has an inability to conform his conduct to the laws of society. [*Id.* at 326.]

In this case, based on the seriousness of the crime and defendant’s prior record, we conclude that the trial court did not abuse its discretion in sentencing defendant. First, this was a serious crime that resulted in serious injuries to defendant’s victim. Second, according to the PSIR, defendant’s prior record included multiple felonies spanning decades. Further, in accord with *Hansford*, *supra*, defendant’s prior record evidences an “inability to conform his conduct to the laws of society,” and the sentence of fifteen to twenty-five years’ imprisonment is within the statutory limits set forth by the Legislature. We find no abuse of discretion.

We affirm but remand for resentencing on the two counts of malicious destruction of property under \$100. We do not retain jurisdiction.

/s/ Richard A. Bandstra

/s/ Richard Allen Griffin

/s/ Robert P. Young, Jr.