

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JAMES KENNETH WILLINGHAM, SR.,

Defendant-Appellant.

UNPUBLISHED

December 1, 1998

No. 205875

Newaygo Circuit Court

LC No. 96-006106 FH

Before: Sawyer, P.J., and Wahls and Hoekstra, JJ.

MEMORANDUM.

Defendant appeals by right his plea-based sentence for assault with intent to commit criminal sexual conduct in the second degree, MCL 750.520g(2); MSA 28.788(7)(2), and habitual offender, second offense, MCL 769.10; MSA 28.1082. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant was originally charged with criminal sexual conduct in the second degree and habitual offender, second offense. It was alleged that defendant had engaged in sexual contact with the victim, his stepdaughter, for a period of approximately four years. Pursuant to an agreement, defendant pleaded nolo contendere to assault with intent to commit criminal sexual conduct in the second degree, and habitual offender, second offense. In return, the prosecutor dismissed the charge of criminal sexual conduct in the second degree, and recommended that the minimum term be capped at three years.

The trial court sentenced defendant to three to seven and one-half years in prison, with credit for 125 days. The court increased the statutory maximum term of five years for the conviction of assault with intent to commit criminal sexual conduct in the second degree one and one-half times based on defendant's conviction as a second habitual offender. MCL 769.10(1)(a); MSA 28.1082(1)(a).

On appeal, defendant argues that his sentence was disproportionate to the circumstances of the offense and to his own circumstances. *People v Milbourn*, 435 Mich 630; 461 NW2d 1 (1990). Defendant cites his minimal prior record, strong family support, and past history of alcohol abuse. He contends that his former wife lodged the charges in retaliation for his reporting of her involvement in narcotics trafficking.

The sentencing guidelines do not apply to habitual offenders. The standard of review for a sentence imposed on an habitual offender is abuse of discretion. If an habitual offender's underlying criminal and felony history demonstrate that he is unable to conform his conduct to the law, a sentence within the statutory limits does not constitute an abuse of discretion. *People v Hansford (After Remand)*, 454 Mich 320, 323-324, 326; 562 NW2d 460 (1997). Here, defendant's abuse of his stepdaughter occurred over a four-year period. Defendant's prior felony was for a criminal sexual offense. Defendant has demonstrated that he cannot conform his conduct to the requirements of the law. His sentence was within the statutory limits, and did not constitute an abuse of discretion under the circumstances.

Affirmed.

/s/ David H. Sawyer

/s/ Myron H. Wahls

/s/ Joel P. Hoekstra