

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

BRADY LEE WILLIAMS,

Defendant-Appellant.

UNPUBLISHED

March 19, 1999

No. 205425

Saginaw Circuit Court

LC No. 95-010364 FH

Before: O'Connell, P.J., and Jansen and Collins, JJ.

MEMORANDUM.

Defendant appeals by right his sentence for probation violation after a plea-based conviction of possession of less than twenty-five grams of cocaine, MCL 333.7403(2)(a)(v); MSA 14.15(7403)(2)(a)(v), and habitual offender, fourth or subsequent offense, MCL 769.12; MSA 28.1084. We affirm, and remand for entry of an amended judgment.

On March 13, 1995 defendant pleaded guilty to the underlying charges of possession and habitual offender. On May 2, 1995 the court sentenced defendant to two years' probation. On July 21, 1995 and July 16, 1996 defendant pleaded guilty to charges of probation violation. The second charge arose out of his plea-based conviction of felon in possession of a firearm. On both occasions his probation was continued, and on the second occasion it was extended for one year.

On July 24, 1997 defendant pleaded guilty to the instant probation violation. Probation was violated as a result of defendant being convicted in separate cases of retail fraud in the first degree and habitual offender, third offense, and fleeing a police officer. The court sentenced defendant to six to fifteen years in prison, concluding that defendant could not conform his conduct to the law, and that a short jail sentence would make no impression on him.

On appeal, defendant argues that his sentence is disproportionate. He asserts that in imposing the sentence that it did, the trial court did not take into consideration the fact that his prior criminal record was tied to his history of substance abuse, and that he was in need of stringent therapy. In addition, defendant contends that he was entitled to six days' credit against his sentence. Plaintiff concedes that defendant is entitled to such credit.

We affirm. The sentencing guidelines do not apply to habitual offenders or probation violators. *People v Williams*, 223 Mich App 409, 412; 566 NW2d 649 (1997). The standard of review for a sentence imposed on an habitual offender is abuse of discretion. If an habitual offender's underlying criminal history 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). Defendant had an extensive criminal record prior to committing the underlying offenses, and committed several crimes, including two felonies, while on probation. As a fourth habitual offender, the court could have imposed a sentence of ten to fifteen years in prison. MCL 769.12(1)(b); MSA 28.1084(1)(b). Defendant's sentence was within the statutory limits, and did not constitute an abuse of discretion under the circumstances.

Affirmed and remanded for entry of an amended judgment of sentence granting defendant six days' credit. We do not retain jurisdiction.

/s/ Peter D. O'Connell

/s/ Kathleen Jansen

/s/ Jeffrey G. Collins