

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

WALI ABDULLAH AHMAD,

Defendant-Appellant.

UNPUBLISHED

March 30, 1999

No. 205653

Muskegon Circuit Court

LC No. 97-140439 FH

Before: Doctoroff, P.J., and Smolenski and Whitbeck, JJ.

PER CURIAM.

A jury convicted defendant of resisting and obstructing a police officer, MCL 750.479; MSA 28.747, fleeing and eluding a police officer, MCL 750.479a; MSA 28.747(1), and driving on a suspended license, MCL 257.904(1); MSA 9.2604(1). Defendant appeals of right. We affirm.

I. Basic Facts And Procedural History

This case arises out of an incident which began in the early morning hours in mid-March, 1997 in Muskegon. Officer Roger DeYoung testified at trial that he received a police safety bulletin regarding a yellow 1982 Lincoln, that was possibly being driven by Darese Sanders, a wanted felon who was believed to be armed, wearing a bulletproof vest and dangerous to police. When Officer Chris Mandoka spotted the 1982 yellow Lincoln and attempted to stop the vehicle, it fled. When asked how he knew the driver of the Lincoln was fleeing, Officer Mandoka stated:

[I]t's very difficult not to notice the siren on our cruisers let alone the overheads and then the high beams. You'd have to be blind not to see this car and especially if it's a fully marked white with reflectors cruiser, you don't miss them. You can't miss them.

Officer Mandoka testified that he pursued the Lincoln, whose driver was later apprehended and identified as defendant. Before he was apprehended, defendant led the police on a relatively high-speed chase. Officer DeYoung testified that, when he first encountered defendant in the Lincoln, defendant tried to hit Officer DeYoung's patrol car head-on and that Officer DeYoung was forced to drive up onto the curb to avoid the collision. Officer DeYoung stated that, when defendant tried to hit him,

defendant was driving sixty to seventy miles per hour and was being pursued by another patrol car, which had its overhead lights and flashing high beams activated.

Officer DeYoung testified that, after he rejoined the pursuit, he observed defendant accelerating through stop signs at speeds as fast as eighty miles per hour. Officer Pete Boterenbrood testified that, when he was in pursuit of defendant, he observed no brake lights coming on as defendant passed through stop signs at speeds as high as seventy miles per hour. Officer DeYoung stated that defendant did not yield as he went through a stop sign and struck a Blazer in the rear quarter panel, tearing the bumper loose and spinning the vehicle around.

After the collision, defendant abandoned the Lincoln and fled on foot. The officers in pursuit of defendant identified themselves as police and yelled for defendant to stop. Officer Boterenbrood testified that when he pursued defendant he was in uniform and that he eventually stopped identifying himself as a police officer because it had become obvious that he was a police officer, the officers were pursuing defendant, and defendant was not going to stop. Officer Boterenbrood testified that defendant's flight ended in a parking lot where, while defendant ran between two parked cars, he was cut off by a police cruiser in front. Officer Jeff Geiger testified that he drove the cruiser that stopped in front of defendant.

Officer Boterenbrood also testified that, when defendant's path was blocked by the police car in front and two parked cars on either side, defendant turned and faced Officer Boterenbrood, who was the first officer in pursuit behind defendant. Officer Boterenbrood further testified that defendant's body language indicated to him that defendant was not trying to fight, but rather was trying to escape past the officer. When defendant attempted to pass Officer Boterenbrood, the officer threw his shoulder into defendant, causing defendant to collide with one of the parked cars and fall to the ground.

Several of the officers testified that, once on the ground, defendant continued to resist by putting his arms underneath himself and resisting being handcuffed. Officer DeYoung testified that, after a brief struggle, the five or six officers at the scene were able to take defendant into custody.

The prosecutor and defense counsel entered a stipulation that stated that:

[T]he defendant - - Wali Abdullah Ahmad's - - his operator's license was suspended or revoked on or about March 13, 1997, and he knew that it was suspended or revoked.

Defendant called no witnesses at trial and, as noted above, the jury found the defendant guilty of all three counts. In his statement to the probation officer who conducted defendant's presentence investigation, and at his allocution at sentencing, defendant stated that he was doing a favor for the owner of the vehicle by retrieving the car for its owner. Defendant further stated that his flight was motivated by the fact that he was on parole at the time and was "high" on cocaine.

At the sentencing, the trial court found sufficient evidence that defendant was an habitual offender who had been convicted of his third felony offense. The trial court considered this in adjusting

the guidelines which had been scored at six to twelve months for defendant's conviction for resisting and obstructing a police officer. The trial court also considered defendant's prior record, including his parole status at the time of the current offenses, the severity of the offenses, defendant's rehabilitative potential, and other prevalent sentencing considerations before pronouncing sentence.

II. Standard Of Review

This Court reviews the proportionality of defendant's sentence for an abuse of discretion by the trial court. *People v Milbourn*, 435 Mich 630, 636; 461 NW2d 1 (1990). Defendant has caused a copy of his presentence report to be provided to this Court and has argued the issue of proportionality of sentence on appeal. This is sufficient to preserve this issue for review. *People v Hill*, 221 Mich App 391, 397; 561 NW2d 862 (1997); *People v Oswald*, 208 Mich App 444, 446; 528 NW2d 782 (1995); MCR 7.212(C)(6).

III. Sentencing Proportionality

The only issue raised by defendant on appeal is whether his sentence of two to four years for his conviction for resisting and obstructing a police officer violates the principle of proportionality. We hold that it did not.

First, we note that the trial court found sufficient evidence to sentence defendant as an habitual offender pursuant to MCL 769.11; MSA 28.1083, increasing the maximum possible sentence for this crime from two years to four years. Next, the sentencing guidelines are not applicable to this defendant as an habitual offender. *People v Kennebrew*, 220 Mich App 601, 612; 560 NW2d 354 (1996). The highest minimum sentence that could be given under the law is two-thirds of the maximum sentence, or twenty-eight months. *People v Tanner*, 387 Mich 683, 690; 199 NW2d 202 (1972). The sentence given by the trial court is less than is allowable under *Tanner*. *Id.*

We have reviewed the transcript of the trial, the transcript of the sentencing hearing and defendant's brief and find that defendant's habitual offender status, lack of prior rehabilitation, parole status at the time of the current offenses, and the danger caused by defendant driving up to eighty miles per hour through stop signs while, on his own admission, "high" on cocaine, make defendant's sentence proportionate to the offense and the offender. *Milbourn*, *supra*, 435 Mich 636. Therefore, we find no abuse of discretion. *Id.*

Affirmed.

/s/ Martin M. Doctoroff
/s/ Michael R. Smolenski
/s/ William C. Whitbeck