

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JAMES WADE HARMON,

Defendant-Appellant.

UNPUBLISHED

June 18, 1999

No. 210320

Livingston Circuit Court

LC No. 97-001033 FH

Before: Neff, P.J., and Hood and Murphy, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of operating a motor vehicle under the influence of liquor (OUIL), MCL 257.625(1); MSA 9.2325(1), third offense; and operating a motor vehicle while his license was suspended (DWLS), MCL 257.904(1); MSA 9.2604(1), second offense. Defendant was sentenced as a third habitual offender, MCL 769.11; MSA 28.1083, to forty to sixty months for the OUIL conviction, which sentence the court vacated; one year in jail for the DWLS conviction; and five to ten years' imprisonment as a third habitual offender. Defendant appeals as of right. We affirm.

Defendant first claims that his sentence of five to ten years' imprisonment under the habitual offender statute is disproportionate and an abuse of the trial court's discretion. The principle of proportionality requires that the sentence imposed be proportionate to the seriousness of the circumstances surrounding the offense and the offender. *People v Milbourn*, 435 Mich 630, 636; 461 NW2d 1 (1990). Defendant contends that the court abused its discretion because defendant's offense did not even approach the most serious case. However, a court does not abuse its discretion by imposing a sentence within the statutory limits established by the Legislature when an habitual offender's underlying felony, in the context of his previous felonies, evidences that he is unable to conform his conduct to the laws of society. *People v Hansford (After Remand)*, 454 Mich 320, 326; 562 NW2d 460 (1997).

Defendant is a repeat offender, who admittedly has a lengthy record of drunk-driving-related charges. This conviction is defendant's third conviction for OUIL, third offense, and his second conviction for DWLS, second offense, with a record of seventeen prior misdemeanors. Defendant has

a twenty-four-year history of alcohol abuse, and a nineteen-year history of drinking and driving convictions. His misdemeanor convictions include six OUIL or alcohol-related offenses, one fleeing and eluding, and one possession of marijuana. Further, at the time of the commission of this offenses, defendant's license was revoked until the year 2022.

As a third habitual offender, defendant was subject to a maximum penalty of twice the maximum sentence on the primary offense, in this case, ten years, which the court imposed. MCL 769.11; MSA 28.1082, MCL 257.625(1); MSA 9.2325(1). However, the court did not impose the highest permitted minimum sentence, which is two-thirds of the maximum sentence. See *People v Thomas*, 447 Mich 390, 392; 523 NW2d 215 (1994).

Considering the circumstances of the offense and defendant's extensive record of repeat drinking and driving offenses, it is clear that defendant is unable to conform his conduct to the laws of society. Previous penalties, including imprisonment, were insufficient to deter defendant from repeating this conduct, which clearly endangers the public. The trial court did not abuse its discretion in sentencing defendant.

Defendant next claims that he is entitled to resentencing because the trial court had a mistaken understanding of the law with regard to its sentencing discretion. A defendant is entitled to resentencing where the sentencing court fails to exercise its discretion because of a mistaken belief of the law. *People v Green*, 205 Mich App 342, 346-347, 517 NW2d 782 (1994). Where a trial court indicates its mistaken belief in the record, this Court has remanded for resentencing. *Id.* Contrary to defendant's contention, however, our review of the record in this case reveals that the court's imposition of a maximum sentence of ten years did not result from a mistaken understanding of the law. Defendant is not entitled to resentencing.

Affirmed.

/s/ Janet T. Neff

/s/ Harold Hood

/s/ William B. Murphy