

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

BRENDA SEALS,

Defendant-Appellant.

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UNPUBLISHED

August 27, 1999

No. 207877

Recorder's Court

LC No. 97-003718

Before: Hoekstra, P.J., and O'Connell and R. J. Danhof\*, JJ.

PER CURIAM.

Defendant appeals as of right from her jury trial convictions of delivery of less than fifty grams of heroin, MCL 333.7401(2)(a)(iv); MSA 14.15(7401)(2)(a)(iv), and possession of less than twenty-five grams of heroin, MCL 333.7403(2)(a)(v); MSA 14.15(7403)(2)(a)(v). She was sentenced as an habitual offender, third offense, to ten to forty years' imprisonment, pursuant to MCL 769.11; MSA 28.1083. We affirm, but remand for the limited purpose of correcting the judgment of sentence.

Defendant argues that her sentence is disproportionate. The principle of proportionality requires that sentences be proportionate to the seriousness of the circumstances surrounding both the offense and the offender. *People v Milbourn*, 435 Mich 630, 636; 461 NW2d 1 (1990). We review a sentence imposed on an habitual offender for an abuse of discretion. *People v Hansford (After Remand)*, 454 Mich 320, 323-324; 562 NW2d 460 (1997). A sentence within the statutory limits does not constitute an abuse of discretion when the habitual offender's underlying felony, in the context of his or her criminal history, demonstrates that the offender is unable to conform his or her conduct to the law. *Id.* at 323, 326. Here, considering defendant's prior criminal convictions for drug offenses, her failure to comply with past probationary terms, and her status as a parolee when she committed the instant crimes, we conclude that defendant's sentence, which is within statutory limits, does not constitute an abuse of discretion. *Id.* Defendant's repeated drug violations demonstrate that she is unable to conform her conduct to the law.

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\* Former Court of Appeals judge, sitting on the Court of Appeals by assignment.

Next, defendant claims that the trial court abused its discretion by admitting evidence of a prior drug conviction. We review the trial court's evidentiary ruling for an abuse of discretion. *People v Howard*, 226 Mich App 528, 551; 575 NW2d 16 (1997). We agree, as defendant asserts, that the prior conviction was inadmissible to impeach her general credibility under MRE 609 because it did not involve an element of dishonesty or false statement or an element of theft. However, the record indicates that the prior conviction was not admitted to impeach defendant's general credibility under MRE 609, but rather to contradict her specific testimony that she did not know that she had done anything illegal by taking money from an undercover police officer, handing it to a third party, taking heroin from that third party, and then giving the heroin to the undercover officer. "MRE 609 was not intended to apply where evidence of prior convictions is offered to rebut specific statements of the defendant who testifies at trial." *People v Taylor*, 422 Mich 407, 414; 373 NW2d 579 (1985). In such circumstances, the trial court may, in its discretion, admit evidence of a defendant's prior conviction to rebut the defendant's specific testimony. *Id.* at 417-418. Because defendant testified that she did not know that she had done anything illegal, it was proper for the prosecutor to introduce evidence in response to show that defendant had been previously convicted of a drug offense.

Furthermore, even if the admission of the evidence were error, we would conclude that the error was harmless. Erroneous admission of prior convictions is harmless if the prosecutor's case was so strong that a reasonable juror could not have voted to acquit even if the evidence had been suppressed. *People v Reed*, 172 Mich App 182, 188; 431 NW2d 431 (1988). Here, the evidence of defendant's guilt was overwhelming. Defendant's own testimony provided strong evidence of her guilt. Therefore, although we find no error in the admission of evidence of defendant's prior conviction, we conclude that if any error existed, it was harmless.

Although not raised by the parties, we note that the judgment of sentence contains an incorrect statutory citation for defendant's habitual offender sentence. The judgment of sentence indicates an enhanced sentence under MCL 769.13; MSA 28.1085, which sets forth various procedural requirements for imposing an habitual offender sentence, instead of MCL 769.11; MSA 28.1083, which provides for enhanced sentencing for habitual offender, third offense. Accordingly, we remand for the limited purpose of correcting the judgment of sentence. *People v Avant*, 235 Mich App 499, 521; \_\_\_ NW2d \_\_\_ (1999). See also MCR 7.216(A)(1); MCR 6.435(A).

Affirmed, but remanded for correction of the judgment of sentence. We do not retain jurisdiction.

/s/ Joel P. Hoekstra  
/s/ Peter D. O'Connell  
/s/ Robert J. Danhof