

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DWAYNE LEO POWELL,

Defendant-Appellant.

UNPUBLISHED

September 10, 1999

No. 209251

Oakland Circuit Court

LC No. 97-153965 FH

Before: Markman, P.J., and Saad and P.D. Houk,* JJ.

MEMORANDUM.

Defendant appeals as of right from his sentence of three and one-half to six years in prison imposed on his convictions of two counts of felonious assault, MCL 750.82; MSA 28.277, and habitual offender, second offense, MCL 769.10; MSA 28.1082, entered after a jury trial. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

The evidence showed that during an altercation defendant smashed the window of a car occupied by his wife, Melissa, with a baseball bat, attempted to strike Melissa with the bat, sprayed her with mace, attempted to kick her, and told his Rottweiler dog to attack her. Melissa testified on defendant's behalf and recanted several accusations, including that defendant sprayed her with mace and told the dog to attack her. The jury found defendant guilty of two counts of felonious assault and one count of assault and battery, a misdemeanor, MCL 750.81; MSA 28.276. Defendant pleaded guilty to the supplemental charge of habitual offender, and was sentenced to an enhanced term of three and one-half to six years' imprisonment, with credit for 185 days. Defendant was also sentenced to 93 days in jail on the misdemeanor conviction, with credit for 93 days.

The sentencing guidelines did not apply because defendant was convicted as an habitual offender; nevertheless, guidelines prepared for the offense of felonious assault recommended a minimum term range of six to twenty-four months. The court indicated that given defendant's prior record, his pattern of assaultive behavior, the extremely serious nature of the instant offense, and his total lack of remorse, a sentence in excess of the guidelines was appropriate.

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

Defendant argues that his minimum term of three and one-half years is disproportionate. We disagree and affirm. The sentencing guidelines do not apply to habitual offenders, and are not to be considered when fashioning an habitual offender sentence. *People v Williams*, 223 Mich App 409, 412-413; 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 demonstrates 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 instant offenses, including multiple convictions for assaultive offenses. He showed no remorse for the instant offenses, and denied that his actions constituted crimes. The court's articulation of reasons for imposing the sentence that it did was sufficient. *People v Sandlin*, 179 Mich App 540, 542; 466 NW2d 301 (1989). Defendant's sentence is within statutory limits, MCL 769.10(1)(a); MSA 28.1082(1)(a), and does not constitute an abuse of discretion.

Affirmed.

/s/ Stephen J. Markman

/s/ Henry William Saad

/s/ Peter D. Houk