

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

BRIAN V. DUDLEY,

Defendant-Appellant.

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UNPUBLISHED

October 8, 1999

No. 212127

Wayne Circuit Court

Criminal Division

LC No. 97-009787

Before: Griffin, P.J., and Zahra and Pavlich\*, JJ.

MEMORANDUM.

Defendant appeals as of right from his sentence of four to twenty years in prison imposed on his convictions of possession with intent to deliver less than fifty grams of cocaine, MCL 333.7401(2)(a)(iv); MSA 14.15(7401)(2)(a)(iv); possession of marijuana, MCL 333.7403(2)(d)(iii); MSA 14.15(7403)(2)(d)(iii), and habitual offender, fourth offense, MCL 769.12; MSA 28.1084. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant argues that his minimum term of four 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 underlying offenses, including a prior narcotics conviction. Defendant's sentence is within statutory limits, MCL 769.12(1)(a); MSA 28.1084(1)(a), and does not constitute an abuse of discretion under the circumstances.

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

Defendant's argument that the guidelines were incorrectly scored is moot. The guidelines were inapplicable due to defendant's status as an habitual offender. *Williams, supra*.

Affirmed.

/s/ Richard Allen Griffin

/s/ Brian K. Zahra

/s/ Scott L. Pavlich