

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

---

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JIMMIE CHARLES LEWIS,

Defendant-Appellant.

---

UNPUBLISHED

April 25, 2000

No. 210490

Genesee Circuit Court

LC No. 97-000756-FC

Before: Collins, P.J., and Neff and Smolenski, JJ.

PER CURIAM.

Defendant appeals as of right from his conviction of assault with intent to commit great bodily harm less than murder, MCL 750.84; MSA 28.279, entered after a jury trial. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant was charged with assault with intent to commit murder, MCL 750.83; MSA 28.278, in connection with the stabbing of Walter Nelson. The prosecution's theory was that defendant intentionally stabbed Nelson during an altercation stemming from Nelson's nonpayment of rent. Defendant testified on his own behalf and maintained that he stabbed Nelson in self-defense. Defendant indicated that he had consumed alcohol on the day of the incident.

The trial court instructed the jury on the charged offense and on the lesser included offenses of assault with intent to commit great bodily harm less than murder and felonious assault, MCL 750.82; MSA 28.277. Each offense on which the jury was instructed is a specific intent crime. Defendant did not request, and the trial court did not give, an instruction on intoxication as a defense to a specific intent crime. The jury convicted defendant of assault with intent to commit great bodily harm less than murder. The trial court sentenced defendant as a fourth habitual offender to ten to twenty years in prison.

Defendant argues that he was denied a fair trial because the trial court failed to sua sponte instruct the jury that intoxication is a defense to a specific intent crime. We disagree and affirm defendant's conviction. Defendant's failure to request an appropriate instruction in the trial court precludes appellate review of this issue absent manifest injustice. MCL 768.29; MSA 28.1052; *People v VanDorsten*, 441 Mich 540, 544-545; 494 NW2d 737 (1993). An instruction on the

defense of intoxication is appropriate only if the facts of the case would allow the jury to conclude that the defendant's intoxication was so great that he was unable to form the requisite intent for the charged offense. A finder of fact is not required to conclude that a defendant's intoxication prevented him from forming the specific intent necessary to commit the charged offense. Specific intent can be express, or it can be inferred from the facts and circumstances surrounding the incident. *People v Beaudin*, 417 Mich 570, 575; 339 NW2d 461 (1983). The evidence showed that defendant stabbed Nelson during an altercation. Defendant testified that he stabbed Nelson intentionally. We hold that there was no basis for an intoxication instruction in this case. No evidence showed that defendant was intoxicated to the point of being unable to form the requisite specific intent. *People v Gomez*, 229 Mich App 329, 333-334; 581 NW2d 289 (1998).

Furthermore, defendant argues that he is entitled to resentencing because his sentence is disproportionate to his circumstances and those of the offense. *People v Milbourn*, 435 Mich 630, 636; 461 NW2d 1 (1990). We disagree and affirm defendant's sentence. 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 requirements of 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). In imposing sentence, the trial court noted that defendant had a lengthy prior record, that he had a long-standing substance abuse problem, and that he committed an offense that could have resulted in a fatality. The trial court's articulation of reasons for imposing the sentence that it did was sufficient. *People v Fleming*, 428 Mich 408, 428; 410 NW2d 266 (1987). Defendant has demonstrated that he is unable to conform his conduct to the requirements of the law. His sentence was within the statutory limits, MCL 769.12; MSA 28.1084, and did not constitute an abuse of discretion under the circumstances.

Affirmed.

/s/ Jeffrey G. Collins  
/s/ Janet T. Neff  
/s/ Michael R. Smolenski