STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

CLIFTON McMULLEN,

Defendant-Appellant.

UNPUBLISHED
June 30, 2000

No. 220089
Kalamazoo Circuit Court
LC No. 98-001550-FC

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

PER CURIAM.

Defendant was charged with kidnapping, MCL 750.349; MSA 28.581, larceny in a building, MCL 750.360; MSA 28.592, and third-degree fleeing and eluding, MCL 750.479a(3); MSA 28.747(1)(3). Following a jury trial, defendant was acquitted of the kidnapping and larceny charges but found guilty on the charge of fleeing and eluding. The trial court subsequently sentenced defendant, as a fourth habitual offender, MCL 769.12; MSA 28.1084, to a term of 6 to 20 years' imprisonment. Defendant appeals as of right. We affirm.

Defendant's sole argument on appeal is that the trial court violated the concept of proportionality in imposing a sentence of 6 to 20 years on his conviction for third-degree fleeing and eluding. We disagree.

When reviewing a challenge to the proportionality of the sentence imposed on an habitual offender, this Court is limited to determining whether the lower court abused its discretion. *People v Hansford (After Remand)*, 454 Mich 320, 323-324; 562 NW2d 460 (1997). An abuse of discretion will be found where the sentence imposed does not reasonably reflect the serious nature of the circumstances surrounding the offense and the offender. *People v Milbourn*, 435 Mich 630, 636; 461 NW2d 1 (1990). Here, in light of the extremely irresponsible and potentially tragic nature of defendant's conduct in committing the instant offense, and considering defendant's extensive criminal history, we do not find that the sentence imposed in the instant matter represents such an abuse.

As noted by the trial court and acknowledged by defendant both at trial and at sentencing, at the time defendant fled from police he was under the influence of both alcohol and marijuana. Trial

testimony from two of the passengers in the vehicle, as well as the officer who gave chase, indicated that in this intoxicated state defendant ran several red lights and forced at least one other motorist to the curb to avoid an accident. The passengers also testified that immediately preceding the chase by police, defendant ran onto a curb where he struck a tree. The testimony also indicated that defendant was traveling at speeds of between 50 to 55[1] miles per hour through a residential neighborhood, while attempting to elude the family of a fourteen-month-old child who was riding unsecured in the back of the car.

Moreover, contrary to defendant's contention that in meting out his sentence, the trial court failed to account for the likelihood of his rehabilitation, we note that the sentencing transcript indicates that the trial court did address defendant's possibility for rehabilitation and concluded that, in light of defendant's prior criminal record, rehabilitation is unlikely.

As stated by our Supreme Court in *Hansford*, *supra* at 326, "a trial court does not abuse its discretion in giving 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 the defendant has an inability to conform his conduct to the laws of society." Here, as a fourth felony offender, defendant could be sentenced to the legislatively set term of life in prison. MCL 769.12; MSA 28.1084.

In light of the fact that the instant offense was committed while on parole and that it represents defendant's eighth felony conviction, we agree with the trial court's assessment concerning the unlikely nature of rehabilitation and the need for an extended period of incarceration. It is clear from defendant's record that prior attempts to rehabilitate him have failed and that community supervision is not effective for him.

Accordingly, the trial court did not abuse its discretion in imposing a sentence of 6 to 20 years' imprisonment.

Affirmed.

/s/ Michael R. Smolenski
/s/ Brian K. Zahra
/s/ Jeffrey G. Collins

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[1] We note that on appeal defendant contests the trial court's statement during sentencing, as gleaned from the facts set forth in the presentence investigation report, that defendant was traveling at 56 miles per hour in a 25-mile-per-hour zone when spotted by police. We agree that inasmuch as the officer's testimony at trial was that he clocked defendant traveling at a speed between 50 to 55 miles per hour in that zone, the court's statement is technically erroneous. However, notwithstanding the minor nature of this discrepancy, we note that defendant forfeited his right to contest factual errors in the presentence report when he failed to object to such errors below. See MCR 6.429(C); *People v Bailey (On Remand)*, 218 Mich App 645, 647; 554 NW2d 391 (1996).