

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DENNIS DANTZLER,

Defendant-Appellant.

UNPUBLISHED

July 7, 2000

No. 218070

Oakland Circuit Court

LC No. 90-099149-FC

Before: Jansen, P.J., and Hood and Saad, JJ.

MEMORANDUM.

Defendant appeals as of right from his pre-Proposal B nolo contendere plea to assault with intent to commit murder, MCL 750.83; MSA 28.278. He was sentenced as an habitual offender, fourth offense, MCL 769.12; MSA 28.1084, to serve ten to thirty years in prison. The lower court denied defendant's motion for correction and appeal of sentence. This appeal is being decided without oral argument pursuant to MCR 7.214(E). We affirm.

Defendant challenges three offense variable scores; however, only a reduction in the score for Offense Variable 2 from fifty points (victim treated with excessive brutality) to zero (no injury) would in fact alter the recommended guidelines' range. Because a factual predicate existed for a finding that the victim was treated with excessive brutality, we decline to further address the merits of defendant's claim. A sentencing court's discretionary interpretation of unchallenged facts does not present a cognizable claim of legal error. *People v Mitchell*, 454 Mich 145, 173-178, 560 NW2d 600 (1997).

Defendant also argues that his sentence is disproportionate. We disagree. This Court's review of an habitual offender sentence is limited to considering whether the sentence violates the principle of proportionality set forth in *People v Milbourn*, 435 Mich 630; 461 NW2d 1 (1990), without reference to the sentencing guidelines, *People v Crawford*, 232 Mich App 608, 621; 591 NW2d 669 (1998). Here, the evidence demonstrated that defendant, while intoxicated, assaulted the victim by punching her with his fist several times, knocking her to the floor and wrapping a piece of clothing tightly around her neck, picking up a stool and threatening to throw it at her, and verbally threatening her life. We further note that the sentencing court reduced defendant's minimum recommended sentence by 5½ years to reflect the years he spent in an Indiana prison after his plea in this case was entered. Under the

circumstances, defendant's sentence is proportional to the offender and the offense, and does not constitute an abuse of sentencing discretion.

Affirmed.

/s/ Kathleen Jansen

/s/ Harold Hood

/s/ Henry William Saad