

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JOSE LUIS ORTIZ,

Defendant-Appellant.

UNPUBLISHED

September 19, 2000

No. 220071

Calhoun Circuit Court

LC No. 98-004950-FC

Before: Talbot, P.J., and Hood and Gage, JJ.

MEMORANDUM.

Defendant was convicted, following a jury trial, of assault with intent to do great bodily harm less than murder, MCL 750.84; MSA 28.279, and two counts of resisting and obstructing a police officer, MCL 750.479; MSA 28.747. Defendant was sentenced as a third-offense habitual offender, MCL 769.11; MSA 28.1083, to a term of eight to twenty years' imprisonment. He appeals as of right, and we affirm.

Defendant argues that there was insufficient evidence to support the specific intent element of his assault with intent to do great bodily harm less than murder conviction. We disagree. Questions of intent and credibility are to be resolved by the trier of fact. *In re Forfeiture of \$25,505*, 220 Mich App 572, 581; 560 NW2d 341 (1996). Viewing the evidence in the light most favorable to the prosecution and considering the viciousness of defendant's attack on the victim, there was ample evidence to support the jury's verdict. *People v McRunels*, 237 Mich App 168, 181; 603 NW2d 95 (1999).

Defendant next argues that the sentence imposed was disproportionate. We disagree. We review claims of disproportionality for an abuse of discretion. *People v Alexander*, 234 Mich App 665, 679; 599 NW2d 749 (1999). In this case, an abuse of discretion did not occur because the sentence was proportionate to the seriousness of the circumstances surrounding the offense and the offender. *Id.* Police entered the home while defendant was assaulting the victim. He held the victim in a choke hold with one hand while striking her with the other. Despite police commands to stop, he continued to abuse the victim. This violent assault, coupled with defendant's extensive criminal history and his lack of rehabilitative potential reveal that the trial court did not abuse its discretion. Defendant's

request that this Court apply the new guidelines is without merit. Because the crime occurred prior to January 1, 1999, the new guidelines do not apply. *Id.* at n 3; MCL 769.34; MSA 28.1097(3.4).

Affirmed.

/s/ Michael J. Talbot

/s/ Harold Hood

/s/ Hilda R. Gage