

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

GARY JOSEPH DEHMEL, JR.,

Defendant-Appellant.

UNPUBLISHED

September 29, 2000

No. 217337

Iosco Circuit Court

LC No. 98-003751 FH

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

PER CURIAM.

After a jury trial, defendant was convicted of breaking and entering, MCL 750.110; MSA 28.305. The trial court sentenced him as a fourth habitual offender, MCL 769.12; MSA 28.1084, to eighteen to thirty-six years' imprisonment. Defendant appeals as of right. We affirm.

Defendant first contends that his sentence was disproportionate. We review a trial court's imposition of sentence for an abuse of discretion. An abuse of discretion occurs when the sentence imposed violates the principle of proportionality, which requires that sentences be proportionate to the seriousness of the circumstances surrounding the offense and the offender. *People v Milbourn*, 435 Mich 630, 635-636; 461 NW2d 1 (1990).

Because defendant qualified as an habitual offender, we may not review defendant's sentence with respect to the sentencing guidelines. *People v Gatewood (On Remand)*, 216 Mich App 559, 560; 550 NW2d 265 (1996).¹ While defendant asserts that "[r]egardless of a person's prior record, this type of offense never warrants a sentence like that imposed in the present case," the Supreme Court has observed that "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." *People v Hansford (After Remand)*, 454 Mich 320, 326; 562 NW2d 460 (1997). Because the existence of defendant's seven prior felony convictions and five misdemeanor convictions clearly demonstrates defendant's failed rehabilitation and inability to conform his conduct to the laws of society, we cannot conclude that the trial court abused its discretion in imposing the statutorily authorized 18 to 36-year sentence. MCL 750.110 (providing for punishment up to a ten-year term of imprisonment), 769.12 (authorizing an enhanced term of life or

¹ As defendant several times acknowledges in his brief on appeal, the legislatively created sentencing guidelines do not apply in this case because defendant committed the instant crime prior to January 1, 1999. *People v Reynolds*, 240 Mich App 250, 253-254; 611 NW2d 316 (2000). We therefore decline to consider the Legislature's guidelines.

any lesser term when the subsequent felony provides for a maximum punishment of five years or more); MSA 28.305, 28.1084.

Defendant next argues that the trial court erred in denying his motion for new trial, in which defendant alleged that he “was denied effective assistance of counsel by his attorney’s failure to move to preclude for all purposes the use of a prior inconsistent statement of witness Mary Simionescu [who, along with defendant, was found inside an unlawfully entered cabin] as involuntary.” Defendant contends on appeal that the trial court incorrectly found as voluntary Simionescu’s post arrest statement to the police.² Because defendant has no standing to challenge the alleged involuntariness of Simionescu’s statements, *People v Jones*, 115 Mich App 543, 547; 321 NW2d 723 (1982) (“There is no authority to extend the personal right of a defendant against coerced self-incrimination to include statements made by witnesses. . . . [and] defendant had no standing to raise the issue of violation of the rights of third parties.”), aff’d 419 Mich 577; 358 NW2d 837 (1984), defense counsel was not ineffective in failing to object to the admission of Simionescu’s prior statements as involuntary.³ *People v Snider*, 239 Mich App 393, 425; 608 NW2d 502 (2000). Furthermore, the prosecutor properly utilized Simionescu’s prior inconsistent statements to impeach her trial testimony. MRE 607; *People v Kilbourn*, 454 Mich 677, 682-684; 563 NW2d 669 (1997) (“The general rule is that evidence of a prior inconsistent statement of the witness may be admitted to impeach a witness even though the statement tends directly to inculcate the defendant.”). We therefore find no abuse of discretion in the trial court’s denial of defendant’s motion for new trial. *People v Leonard*, 224 Mich App 569, 580; 569 NW2d 663 (1997).

Affirmed.

/s/ Michael J. Talbot
/s/ Harold Hood
/s/ Hilda R. Gage

² Simionescu testified at trial that she alone broke into several cabins, and the prosecutor impeached her with her statements to police that defendant broke into the cabins.

³ We further note that the available record does not demonstrate that Simionescu’s statements were not the product of her free and unconstrained choice. *People v Givans*, 227 Mich App 113, 121; 575 NW2d 84 (1997). While Simionescu alleged a lack of sleep and recent alcohol and cocaine use, no indication exists that the interviewing officers exploited these conditions. *People v Fike*, 228 Mich App 178, 182; 577 NW2d 903 (1998). Moreover, any credibility issues involving Simionescu and the interviewing officer, concerning promised leniency in exchange for Simionescu’s testimony implicating defendant, should be left to the trial court. *People v Sexton (After Remand)*, 461 Mich 746, 753; 609 NW2d 822 (2000).