

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

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

LEONARD ANTWANE WILBURN, JR.,

Defendant-Appellant.

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UNPUBLISHED

September 29, 2000

No. 220278

Berrien Circuit Court

LC No. 96-000818-FC

Before: McDonald, P.J., and Sawyer and White, JJ.

PER CURIAM.

Defendant appeals as of right from his sentence of life in prison imposed on his conviction of assault with intent to commit murder, MCL 750.83; MSA 28.278. We affirm.

Defendant was convicted by a jury of assault with intent to commit murder and possession of a firearm during the commission of a felony, MCL 750.227b; MSA 28.424(2). At sentencing, the trial court concluded that given that defendant's parents had long histories of criminal behavior, it was unreasonable to expect that defendant could be rehabilitated. The court sentenced defendant to life in prison for the assault conviction, and to a consecutive two-year term, with credit for 237 days, for the felony-firearm conviction.

Defendant appealed, and in *People v Wilburn*, unpublished opinion per curiam of the Court of Appeals, issued January 30, 1998 (Docket No. 200502), another panel of this Court affirmed defendant's conviction, but vacated his life sentence and remanded for resentencing without consideration of the inappropriate factor of defendant's parents' criminal histories. This Court noted that it was not necessarily convinced that the sentence of life in prison was disproportionate.

On remand, the trial court acknowledged that the presence of any factor did not necessarily preclude rehabilitation, but observed that under some circumstances rehabilitation was less likely. The court found that defendant's positive accomplishments while in prison did not merit a reduction in his sentence given his negative prison behavior, i.e., the accumulation of eleven major misconduct citations. Citing the severity of the offense and the need to protect society, the court resentenced defendant to life

in prison for the assault conviction, and to a consecutive two-year term for felony-firearm, with credit for 1,182 days.

Defendant argues that he is again entitled to resentencing, this time before a different judge, because the trial court's reasoning on remand did not comport with this Court's decision. We disagree and affirm defendant's sentence. The sentencing guidelines do not apply to habitual offender sentences, and should not be considered when fashioning a sentence for an habitual offender. *People v Williams*, 223 Mich App 409, 412-413; 566 NW2d 649 (1997). 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 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). When it sentenced defendant on remand, the trial court comported with this Court's instructions by refraining from consideration of inappropriate factors. The trial court concluded that given the seriousness of the offense and the need to protect society from defendant, a sentence of life in prison for the conviction of assault with intent to commit murder was still warranted, notwithstanding defendant's positive accomplishments in prison. The court's articulation of reasons for imposing the sentence was sufficient. *People v Triplett*, 432 Mich 568, 573; 442 NW2d 622 (1989). The sentence was within statutory limits, and did not constitute an abuse of discretion under the circumstances. *Hansford, supra*. Given our resolution of the principal issue, defendant's argument that he is entitled to appear before a different judge is moot.

Affirmed.

/s/ Gary R. McDonald

/s/ David H. Sawyer

/s/ Helene N. White