

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

HENRY JAMES WOODBERRY,

Defendant-Appellant.

UNPUBLISHED

September 29, 2000

No. 220416

Jackson Circuit Court

LC No. 99-092224-FC

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

PER CURIAM.

Defendant appeals as of right from his sentences of two years, four months to six years and two years imposed on his convictions of felonious assault, MCL 750.82; MSA 28.277, possession of a firearm during the commission of a felony, MCL 750.227b; MSA 28.424(2), and habitual offender, second offense, MCL 769.10; MSA 28.1082. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

The trial court sentenced defendant as an habitual offender to two years, four months to six years for the conviction of felonious assault, and to the mandatory term of two years for the conviction of felony-firearm. During the same proceeding, the court sentenced defendant to a term of two to eight years for probation violation. The court directed that defendant first serve the two-year term, and then serve the remaining sentences concurrently.

Defendant argues that his minimum term of two years, four months is disproportionate. We disagree and affirm. The sentencing guidelines do not apply to habitual offenders, and are not to be considered when fashioning an habitual offender sentence. *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). Defendant had an extensive criminal history prior to committing the underlying offenses, and committed the offenses while on probation. Had defendant been successful in releasing the safety on the gun pointed at the victim, the victim could have been seriously injured or killed. Defendant's

sentence is within statutory limits, MCL 769.10(1)(a); MSA 28.1082(1)(a), and does not constitute an abuse of discretion under the circumstances.

We note that defendant committed the offenses of felonious assault and felony-firearm after January 1, 1999. The legislative guidelines apply to offenses committed after that date. MCL 769.34(2); MSA 28.1097(3.4)(2). Defendant's minimum term of two years, four months for the offense of felonious assault is within the guidelines. Even if defendant had not been sentenced as a second habitual offender, he would not be entitled to relief. Absent an error in the scoring of the guidelines or reliance by the trial court on inaccurate information, a sentence within the guidelines must be affirmed. MCL 769.34(10); MSA 28.1097(3.4)(10).

Affirmed.

/s/ Gary R. McDonald

/s/ David H. Sawyer

/s/ Helene N. White