

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JOSEPH GENE GARIEPY,

Defendant-Appellant.

UNPUBLISHED

May 29, 2001

No. 222907

Calhoun Circuit Court

LC No. 99-001230-FH

Before: McDonald, P.J., and Smolenski and K.F. Kelly, JJ.

MEMORANDUM.

Defendant appeals as of right from his sentence for felonious assault, MCL 750.82; MSA 28.277, and habitual offender, second offense, MCL 769.10; MSA 28.1082, entered after a jury trial. We affirm.

Defendant's conviction arose from an incident in which he assaulted a police officer who was attempting to arrest him. The trial court sentenced defendant as an habitual offender to two years, four months to six years in prison, with credit for 174 days. The court ordered that the sentence be consecutive to another sentence defendant was serving, on the ground that defendant committed the instant offense while on bond. MCL 768.7b(2)(a); MSA 28.1030(2)(2)(a).

On appeal, defendant challenges neither the length of the sentence imposed nor the trial court's authority to impose a consecutive sentence, but rather argues that a consecutive sentence was disproportionate and an abuse of discretion. *People v Milbourn*, 435 Mich 630, 636; 461 NW2d 1 (1990). We disagree and affirm defendant's sentence. The standard of review for a sentence imposed on an habitual offender is abuse of discretion.

The sentencing guidelines do not apply to habitual offenders. If an habitual offender's underlying criminal history demonstrates that he is unable to conform his conduct to the requirements of 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). Here, defendant assaulted a police officer who was attempting to apprehend him. He had a prior record, including convictions for assaultive offenses. Defendant has demonstrated that he cannot conform his conduct to the requirements of the law. His consecutive sentence was authorized by law, MCL 768.7b(2)(a); MSA 28.1030(2)(2)(a), and was within the statutory

limits, MCL 769.10(1)(a); MSA 28.1082(1)(a). His sentence did not constitute an abuse of discretion under the circumstances.

Affirmed.

/s/ Gary R. McDonald
/s/ Michael R. Smolenski
/s/ Kirsten Frank Kelly