

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ROBERT EARL BENTLEY,

Defendant-Appellant.

UNPUBLISHED

July 27, 2001

No. 222124

Saginaw Circuit Court

LC No. 98-016688-FC

Before: Neff, P.J., and O'Connell and R. J. Danhof*, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of armed robbery, MCL 750.529, safe breaking, MCL 750.531, and possession of a firearm during commission of a felony, MCL 750.227b. He was sentenced as a fourth habitual offender to twenty-five to fifty years' imprisonment for the armed robbery conviction, fifteen to twenty-five years' imprisonment for the safe-breaking conviction, and a two-year term of imprisonment for the felony-firearm conviction, to be served consecutive to both the armed robbery and safe-breaking terms. He appeals as of right. We affirm.

Defendant argues that the sentencing court erred by making the felony-firearm sentence consecutive to both the armed robbery and safe breaking sentences. Even if defendant's argument is technically correct, this claimed error will have no effect on the amount of time he will serve on these sentences and any error is harmless beyond a reasonable doubt.

Defendant next argues that the sentencing court abused its discretion by imposing a disproportionately harsh sentence. We disagree.

This Court reviews a trial court's sentence on an habitual offender for an abuse of discretion. *People v Reynolds*, 240 Mich App 250, 252; 611 NW2d 316 (2000). Defendant contests only the proportionality of the armed robbery sentence, and does not dispute that the sentence was within the judicial sentencing guidelines applicable to this case. However, defendant argues that even a sentence within the guidelines' range can be an abuse of discretion where it leaves little or no opportunity for defendant to rehabilitate himself.

* Former Court of Appeals judge, sitting on the Court of Appeals by assignment.

A trial court does not abuse its discretion in sentencing an habitual offender within the statutory limits established by the Legislature when the offender's underlying felony, in the context of previous felonies, evinces the defendant's inability to conform his conduct to the laws of society. *Id.* at 252. In this case, defendant's twenty-five-year minimum term falls within the judicial, rather than legislative sentencing guidelines for armed robbery for a non-habitual offense because the legislative guidelines apply only to offenses committed after January 1, 1999 and these offenses occurred in 1998. *Id.* at 253. In addition, defendant has an extensive criminal history, demonstrating that he is not someone who is able to conform to the law and the offenses here were very serious ones. Therefore, the sentencing court did not abuse its discretion.

Affirmed.

/s/ Janet T. Neff

/s/ Peter D. O'Connell

/s/ Robert J. Danhof