

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

BRINSON HAMILTON,

Defendant-Appellant.

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UNPUBLISHED

December 28, 2001

No. 225807

Genesee Circuit Court

LC No. 99-004697-FC

Before: Saad, P.J., and Sawyer and O'Connell, JJ.

PER CURIAM.

Defendant appeals as of right from his convictions, following a jury trial, of felonious assault, MCL 750.82, and possession of a firearm during the commission of a felony, MCL 750.227b. Defendant was sentenced as an habitual offender, fourth offense, MCL 769.12, to a term of ten to fifteen years' imprisonment for the assault conviction, to be served consecutively to the mandatory two-year term for the felony-firearm conviction. We affirm.

Defendant's sole argument on appeal is that his assault sentence violates the principle of proportionality. We disagree. Because defendant committed these offenses before January 1, 1999, the legislative sentencing guidelines are not applicable. MCL 769.34(1); *People v Reynolds*, 240 Mich App 250, 254; 611 NW2d 316 (2000).<sup>1</sup> We review sentencing issues for an abuse of discretion. *People v Rice (On Remand)*, 235 Mich App 429, 445; 597 NW2d 843 (1999). This Court reviews the sentence to determine if it violates the principle of proportionality. *People v Milbourn*, 435 Mich 630, 636; 461 NW2d 1 (1990). "[A] given sentence can be said to constitute an abuse of discretion if that sentence violates the principle of proportionality, which requires sentences imposed by the trial court to be proportionate to the seriousness of the circumstances surrounding the offense and the offender." *Id.*

We disagree with defendant's contention that his sentence violated the principle of proportionality. Defendant's despicable criminal act inflicted grievous consequences on the victim, Brent Diggs, that will affect him for the rest of his life. As a result of shooting Diggs in the back as he attempted to flee, defendant rendered Diggs paralyzed from the chest down.

<sup>1</sup> Because defendant was sentenced as a fourth habitual offender, the judicial sentencing guidelines were also inapplicable. *People v Sabin (On Second Remand)*, 242 Mich App 656, 661; 620 NW2d 19 (2000).

Moreover, as the trial court noted, defendant had been convicted of five prior felonies and two misdemeanors. Various penalties, such as imprisonment, parole and probation, have been unsuccessful in affecting defendant's recidivism. Considering the severity of this offense, as well as defendant's inability to conform his behavior to the requirements of law, we are satisfied that the trial court's sentence did not amount to an abuse of discretion.

Affirmed.

/s/ Henry William Saad

/s/ David H. Sawyer

/s/ Peter D. O'Connell