

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

WILLIAM ROSS,

Defendant-Appellant.

UNPUBLISHED

November 19, 2002

No. 234032

Wayne Circuit Court

LC No. 98-007653

Before: Talbot, P.J., and Neff and Fitzgerald, JJ.

PER CURIAM.

This matter is before this Court for the second time. Defendant previously appealed his jury-trial convictions of unarmed robbery, MCL 750.530, assault with intent to do great bodily harm less than murder, MCL 750.84, and third-degree fleeing and eluding a police officer, MCL 750.479a(3). Defendant also appealed his sentence, as a fourth habitual offender, MCL 769.12, to a term of twenty-one to forty years' imprisonment. This Court affirmed defendant's convictions but remanded for resentencing because of a factual inaccuracy in one of the convictions supporting defendant's status as a fourth habitual offender. On remand, the trial court sentenced defendant as a third habitual offender, MCL 769.11, to sixteen to thirty years' imprisonment. Defendant now appeals his sentence as of right. We affirm.

Defendant first argues that his sentence is disproportionate under *People v Milbourn*, 435 Mich 630; 461 NW2d 1 (1990). Defendant characterizes his offense as "some low level property crime" that unexpectedly escalated as defendant tried to flee. Defendant agrees with the trial court's observation at resentencing that this crime was like "an aggravated purse snatching." Defendant maintains that his criminal history does not warrant such a harsh sentence because his prior offenses are a series of low-level property crimes. Defendant claims that he is a petty thief and not a dangerous person, contrary to the trial court's remarks at sentencing.

The judicial sentencing guidelines do not apply to defendant because he is an habitual offender.¹ *People v Hansford (After Remand)*, 454 Mich 320, 323; 562 NW2d 460 (1997);

¹ Because the offenses of which defendant was convicted were committed on June 23, 1998, the judicial sentencing guidelines would apply if defendant were not an habitual offender. MCL 769.34(1).

People v Alexander, 234 Mich App 665, 679; 599 NW2d 749 (1999). We review the sentence of an habitual offender for an abuse of discretion. *Hansford (After Remand)*, *supra* at 323-324. Defendant's sentence must be proportionate to the circumstances of the offense and the offender. *Milbourn*, *supra* at 635-636, 654; *People v Bennett*, 241 Mich App 511, 515; 616 NW2d 703 (2000).

At resentencing, the trial court noted defendant's work evaluations and other documentation which indicated that he was punctual, followed the rules, completed his work, and that he had been behaving appropriately in prison. The court recognized that the maximum sentence it could impose on defendant as a third habitual offender is a term of twenty to thirty years. Notwithstanding the court's belief that defendant is still dangerous when he is released back into society, the court sentenced defendant to a lesser term of sixteen to thirty years in recognition that defendant had proven himself to the Department of Corrections by his conduct. With respect to defendant's six felony convictions and eleven misdemeanor convictions, the court stated: "And you'd probably have more if you weren't incarcerated at some point, because you're showing me that you're just not staying out of trouble." If an habitual offender's underlying felony and criminal history demonstrate that he is unable to conform his conduct to the law, a sentence within the statutory limit is proportionate. *People v Compeau*, 244 Mich App 595, 599; 625 NW2d 120 (2001). We find no abuse of discretion.

Defendant also argues that he is entitled to resentencing because his delayed application to the Supreme Court was pending at the time he was resentenced. The effect of an application for leave to appeal to the Supreme Court is controlled by MCR 7.302. We review a trial court's application of law de novo. *People v Thousand*, 465 Mich 149, 156; 631 NW2d 694 (2001).

MCR 7.302(C)(4)(a) provides that an application to the Supreme Court following a decision of this Court remanding the case for further proceedings must be filed within twenty-one days of this Court's decision. A timely appeal from such a decision stays proceedings on remand unless the Court of Appeals orders otherwise. MCR 7.302(C)(5)(a). In this case, defendant's application for leave to the Supreme Court was not timely. *People v Ross*, 465 Mich 864 (2001). Accordingly, defendant provides no basis on which to invalidate his sentence.²

Affirmed.

/s/ Michael J. Talbot
/s/ Janet T. Neff
/s/ E. Thomas Fitzgerald

² Defendant relies on an unpublished opinion of this Court, which carries no precedential weight and is factually distinguishable from the case at bar because it involved a timely-filed application. MCR 7.215(C)(1); *People v Coutu*, 235 Mich App 695, 707 n 6; 599 NW2d 556 (1999).