

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JACOB RUSSELL MARTIN,

Defendant-Appellant.

UNPUBLISHED

October 19, 2004

No. 248147

Allegan Circuit Court

LC No. 00-011589-FC

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

MEMORANDUM.

Defendant appeals as of right his habitual offender sentence of twenty-nine to sixty years in prison for second-degree murder, MCL 750.317; MCL 769.10. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

In *People v Martin*, unpublished opinion per curiam of the Court of Appeals, issued December 13, 2002 (Docket No. 231696), another panel of this Court affirmed defendant's conviction of second-degree murder but remanded for resentencing due to an error in the calculation of the statutory sentencing guidelines. On remand, the trial court sentenced defendant to twenty-nine to sixty years in prison, with credit for 1,054 days.

The decision to sentence a defendant as an habitual offender is within the discretion of the trial court. *People v Alexander*, 234 Mich App 665, 673-674; 599 NW2d 749 (1999). If a defendant is to be sentenced as an habitual offender, the guidelines are scored on the basis of the underlying offense. The upper limit of the minimum sentence range is then increased by a percentage depending on the defendant's status as a second, third, or fourth habitual offender. MCL 777.21(3). The sentencing information report prepared for the original sentencing indicates that the guidelines factored in defendant's status as a second habitual offender. The trial court sentenced defendant as a second habitual offender. Similarly, the sentencing information report prepared on remand factored in defendant's status as a second habitual offender. The trial court clearly recognized defendant's status as a second habitual offender and resentenced him as such. No abuse of discretion occurred. *Alexander, supra*.

Affirmed.

/s/ Richard Allen Griffin

/s/ Henry William Saad

/s/ Peter D. O'Connell