

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JOHNNY EDWARD HUNT-PRUITT,

Defendant-Appellant.

UNPUBLISHED

December 17, 1996

No. 184345

Ottawa County

LC No. 94-18210-FH

Before: Sawyer, P.J., and Markman and H. A. Koselka,* JJ.

PER CURIAM.

Defendant appeals by right his 1994 jury trial conviction of two counts of felonious assault, MCL 750.82; MSA28.277, malicious destruction of personalty, MCL 750.377a; MSA 28.609(1), and aggravated assault, MCL 750.81a; MSA 28.276(1). He pled guilty to habitual offender - second felony, MCL 769.10; MSA 28.1082. The trial court sentenced defendant to forty-eight to seventy-two months' imprisonment as an habitual offender for the two counts of felonious assault and the malicious destruction of property count and to a concurrent term of six to twelve months' imprisonment on the aggravated assault count. We affirm.

These charges arose out of an incident in which defendant and a co-defendant forced the complainants' car off the road, assaulted complainants (a middle-aged couple) and damaged their car with a metal pipe or bat. At trial, co-defendant testified as part of a plea agreement. He admitted his involvement in the incident and testified that defendant participated in it. Defendant did not testify on his own behalf.

Defendant claims that the forty-eight to seventy-two month sentence was disproportionate. He notes that the guidelines' range for his felonious assault conviction was six to twenty-four months. This Court reviews the proportionality of an habitual offender's sentence for an abuse of discretion without reference to the guidelines. *People v Yeoman*, 218 Mich App 406, 419; ___ NW2d ___ (1996). See also *People v Gatewood*, 450 Mich 1025; 546 NW2d 252 (1996). The sentence of an habitual

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

offender must meet the principle of proportionality set forth in *People v Milbourn*, 435 Mich 630; 461 NW2d 1 (1990). *Yeoman*, *supra* at 422. The principle of proportionality requires that a sentence “be proportionate to the seriousness of the circumstances surrounding the offense and the offender.” *Milbourn*, *supra* at 636.

Here, the sentencing court specifically discussed the nature of the offense:

The actions that were taken by you and [co-defendant] in this occurrence are completely unexplained, unprovoked and brutal and violent and actions taken toward people who were hardly in any position to defend themselves from your attack.

We find that there was no abuse of discretion in the sentence imposed.

Affirmed.

/s/ David H. Sawyer

/s/ Stephen J. Markman

/s/ Harvey A. Koselka