

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

SAMUEL ANAYA,

Defendant-Appellant.

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UNPUBLISHED

December 20, 1996

No. 185783

LC No. 94-036841-FH

Before: Hood, P.J., and Neff and M. A. Chrzanowski,\* JJ.

MEMORANDUM.

Defendant was convicted by the trial court of one count of uttering and publishing a forged instrument, MCL 750.249; MSA 28.446, and pleaded guilty to being an habitual offender (fourth), MCL 769.12; MSA 28.1084. Defendant was sentenced to five to forty years of imprisonment, to be served consecutively to the sentences for which he was on parole when he committed the instant offense. Defendant appeals as of right, challenging the proportionality of his sentence. We affirm.

The sentencing guidelines do not apply to habitual offenders like defendant, and it is inappropriate to use them when reviewing defendant's sentence. *People v Cervantes*, 448 Mich 620, 625 (Riley, J), 640 (Cavanaugh, J); 532 NW2d 831 (1995). Nonetheless, the principle of proportionality announced in *People v Milbourn*, 435 Mich 630, 635-636; 461 NW2d 1 (1990) applies.

The maximum sentence for uttering and publishing a forged instrument is fourteen years. MCL 750.249; MSA 28.446. As an habitual offender (fourth), defendant could have received a sentence of life imprisonment. MCL 769.12; MSA 28.1084. In light of defendant's lengthy prior criminal record and his repeated violations of parole we conclude that defendant's five-year minimum sentence does not violate the doctrine of proportionality. We further reject defendant's suggestion that the bank's error in cashing the forged check mitigates his culpability and renders his sentence disproportionate.

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

Affirmed.

/s/ Harold Hood

/s/ Janet T. Neff

/s/ Mary A. Chrzanowski