

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

MICHAEL SCOTT,

Defendant-Appellant.

UNPUBLISHED

March 14, 1997

No. 185722

Jackson Circuit Court

LC No. 94-70843-FH

Before: Reilly, P.J. and MacKenzie, and B.K. Zahra,* JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of being a prisoner in possession of a weapon, MCL 800.283(4); MSA 28.1623(4). He was sentenced as a fourth habitual offender, MCL 769.12; MSA 28.1084, to serve 90 to 180 months in prison, consecutive to a sentence already being served by defendant at the time of the offense. He appeals as of right. We affirm.

Defendant first argues that the magistrate abused his discretion by binding defendant over for trial. This Court will not substitute its judgment for that of the examining magistrate unless an abuse of discretion is apparent. *People v Woods*, 200 Mich App 283, 288; 504 NW2d 24 (1993). The standard for reviewing a decision for an abuse of discretion is narrow; the result must have been so violative of fact and logic that it evidences a perversity of will, a defiance of judgment, or an exercise of passion or bias. *People v Meredith (On Remand)*, 209 Mich App 403, 410; 531 NW2d 749 (1995). If, at the conclusion of a preliminary examination, the magistrate determines that there is probable cause to believe that a crime has been committed and that the defendant committed it, the magistrate must bind the defendant over for trial. MCL 766.13; MSA 28.931. Probable cause that the defendant has committed the crime is established by a reasonable ground of suspicion, supported by circumstances sufficiently strong in themselves to warrant a cautious man in the belief that the accused is guilty of the offense charged. *Woods, supra*. Probable cause that a crime has been committed is established by the state's presentation of some evidence of each element of the crime, but the prosecutor need not prove each element beyond a reasonable doubt. *People v Coddington*, 188 Mich App 584, 591; 470

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

NW2d 478 (1991). Moreover, the prosecution may establish probable cause through circumstantial evidence and reasonable inferences arising from the evidence. *Id.*

Here, the statute under which defendant was charged states that “[u]nless authorized by the chief administrator of the correctional facility, a prisoner shall not have in his or her possession or under his or her control a weapon or other implement which may be used to injure a prisoner or other person, or to assist a prisoner to escape from imprisonment.” MCL 800.283; MSA 28.1623. The evidence presented at the preliminary examination consisted of a prison guard’s personal observations of how defendant ran from guards just before being subject to a search. A guard testified that when cornered, defendant dropped an object to the ground that was described as a 9-1/2 inch sharpened steel shank. The preliminary examination testimony was sufficient to warrant the magistrate in believing that defendant had committed the charged offense, and therefore the magistrate properly bound defendant over for trial. Contrary to defendant’s contentions, the presentation of physical evidence is not necessary to justify a bindover because the magistrate properly relied on circumstantial evidence and reasonable inferences when binding defendant over for trial. *Coddington, supra* at 591.

Defendant also argues that his sentence is disproportionate. This Court must consider whether the sentencing court abused its discretion in imposing defendant’s sentence. *People v Cervantes*, 448 Mich 620, 626; 532 NW2d 831 (1995). A given sentence constitutes an abuse of discretion if the sentence violates the principle of proportionality, which requires that sentences imposed be proportionate to the seriousness of the circumstances surrounding the offense and the offender. *People v Milbourn*, 435 Mich 630, 636; 461 NW2d 1 (1990). Contrary to defendant’s argument, this Court will not review a sentence of an habitual offender for proportionality by comparing the sentence imposed with the recommendation of the sentencing guidelines for the underlying offense. Our Supreme Court has expressly disavowed such analysis. *Cervantes, supra*. In reviewing sentences enhanced under the habitual offender statute, this Court will only consider whether the sentencing court abused its discretion in imposing the sentence. *Id.*

In this case, the court did not abuse its discretion in sentencing defendant. The court properly considered defendant’s past criminal history, his potential for rehabilitation, and the potential for preventing others from committing like offenses. The court recognized a problem with defendant’s prospect for rehabilitation in light of the substantial prison time he had already served. Moreover, the court contemplated defendant’s past criminal history by noting his three prior felony convictions. The sentencing court stressed the importance of deterrence in sentencing, especially when the underlying conduct constitutes a fourth felony. Defendant’s sentence does not violate the principle of proportionality.

Affirmed.

/s/ Maureen Pulte Reilly
/s/ Barbara B. MacKenzie
/s/ Brian K. Zahra

