

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DANIEL ODELL HOLOWAY,

Defendant-Appellant.

UNPUBLISHED

September 11, 1998

No. 203247

Muskegon Circuit Court

LC No. 96-139939 FH

Before: Holbrook, Jr., P.J., and Wahls and Cavanagh, JJ.

MEMORANDUM.

Defendant appeals by right his life sentence on convictions for two counts of third-degree criminal sexual conduct, MCL 750.520d(1)(a); MSA 28.788(4)(1)(a), and habitual offender, fourth offense, MCL 769.12; MSA 28.1084, entered after a bench trial. We affirm.

Defendant's convictions arose out of the sexual assault of his girlfriend's fourteen-year-old niece. Defendant admitted to oral and vaginal penetration, but asserted that he believed that the girl was seventeen-years-old. The trial court observed that at the time he committed the assault, defendant had been off parole for only two and one-half months, after having previously been convicted of a similar assault on a thirteen-year-old. The court found it unlikely that defendant's conduct would change, and that defendant posed a danger to young women and to society. The court sentenced defendant to life imprisonment.

On appeal, defendant argues that his sentence is disproportionate and constitutes cruel or unusual punishment. We disagree. A habitual offender sentence is reviewed for abuse of discretion. *People v Cervantes*, 448 Mich 620, 627; 532 NW2d 831 (1995). Review is limited to whether the sentence violates the principle of proportionality. *Id.*; *People v McCoy*, 223 Mich App 500, 506; 566 NW2d 667 (1997). When a habitual offender's underlying felony and criminal history demonstrates that he is unable to conform his conduct to the law, a sentence within the statutory limits is proportionate. *People v Hansford (After Remand)*, 454 Mich 320, 326; 562 NW2d 460 (1997).

The trial court relied on factors which were similar to those found to be permissible considerations in *Hansford*. Defendant had recently been discharged from parole for the same offense.

Defendant's actions, in the context of his previous felonies, evidence that he has an inability to conform his conduct to the laws of society. *Id.* The serious nature of the crime, defendant's criminal history, and his clear inability to reform convince this Court that the trial court did not abuse its discretion in imposing a life sentence. A proportionate sentence does not constitute cruel or unusual punishment. *People v Terry*, 224 Mich App 447, 456; 569 NW2d 641 (1997).

Affirmed.

/s/ Donald E. Holbrook, Jr.

/s/ Myron H. Wahls

/s/ Mark J. Cavanagh