

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JOHN C. BLEVINS,

Defendant-Appellant.

UNPUBLISHED
October 13, 1998

No. 200726
Genesee Circuit Court
LC No. 93-049073 FH

AFTER REMAND

Before: Smolenski, P.J., and McDonald and Saad, JJ.

PER CURIAM.

A jury convicted defendant of receiving and concealing stolen firearms, MCL 750.535b; MSA 28.803(2); receiving and concealing stolen property in excess of \$100, MCL 750.535; MSA 28.803; and possession of a short-barreled shotgun, MCL 750.224b; MSA 28.421(2). The court subsequently convicted defendant of habitual offender, fourth offense, MCL 769.12; MSA 28.1084. The court sentenced him to twenty to forty years' imprisonment for the receiving and concealing firearms conviction, life imprisonment for the receiving and concealing stolen property conviction, and ~~7½~~ 15 years' imprisonment for the short-barreled shotgun conviction. Defendant appealed his conviction and sentence as of right. This Court, in an unpublished per curiam opinion, affirmed defendant's convictions, but remanded for resentencing because the trial court failed to prepare sentencing guidelines for the underlying offenses. *People v Blevins*, unpublished opinion per curiam of the Court of Appeals, issued May 21, 1996 (Docket No. 171902). On remand, the trial court prepared sentencing guidelines for the underlying offenses and resentenced defendant to the original terms of imprisonment with credit for time served. Defendant now appeals as of right the sentence imposed, and we affirm.

Defendant claims his sentence violates the principle of proportionality as set forth in *People v Milbourn*, 435 Mich 630; 461 NW2d 1 (1990). We disagree. Under *Milbourn*, a sentence must be proportionate to the seriousness of the offense and the offender. *Id.* at 636; *People v Green*, 228 Mich App 684, 698; 580 NW2d 444 (1998). When the court sentences a defendant as an habitual offender, the reviewing court does not consider the sentencing guidelines in determining whether an abuse of discretion has occurred. *Id.* Seized at defendant's home were newspaper obituaries, and a handwritten list of survivors noting their addresses and the times of the decedents' funerals. Defendant

had over \$27,000 worth of stolen merchandise in his home at the time of his arrest, much of which had been obtained through a scheme that victimized individuals attending funerals of close family members. The trial court deemed this practice unconscionable, and commented on its criminal sophistication.

We review the proportionality of an habitual offender sentence for abuse of discretion. *People v Edgett*, 220 Mich App 686, 694; 560 NW2d 360 (1996). As an habitual offender, fourth offense, defendant could have been sentenced to life or a lesser term of imprisonment, MCL 769.12(1)(a); MSA 28.1084(1)(a). Given defendant's extensive criminal history, his apparent unwillingness to obey the law, the continuing threat he poses to the community, and the unconscionable nature of the burglary scheme, we cannot say that defendant's sentence violated the principle of proportionality.¹ The trial court did not abuse its discretion in sentencing defendant.

Affirmed.

/s/ Michael R. Smolenski

/s/ Gary R. McDonald

/s/ Henry William Saad

¹ We are unimpressed by defendant's contention that he has been a "model prisoner". Defendant has no employment history at his prison assignment, he has not attempted to avail himself of substance abuse treatment or education, and he has a history of being AWOL and escaping custody.