

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

WILLIAM HAROLD HOWARD, JR.,

Defendant-Appellant.

UNPUBLISHED
October 20, 1998

No. 202405
Oakland County Circuit
LC No. 96-149507 FH

Before: Hoekstra, P.J., and Cavanagh and O’Connell, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of assault with intent to commit great bodily harm less than murder, MCL 750.84; MSA 28.279, and being an habitual offender, third offense, MCL 769.11(1)(a); MSA 28.1083(1)(a). The court first sentenced defendant to a term of five to twenty years’ imprisonment on the assault conviction; however, the court vacated that sentence and instead imposed the same term of imprisonment for the habitual offender conviction. Defendant appeals as of right from his sentence. We affirm.

We review the proportionality of an habitual offender’s sentence for an abuse of discretion. *People v Edgett*, 220 Mich App 686, 694; 560 NW2d 360 (1996). When a defendant is sentenced as an habitual offender, the sentencing guidelines have no bearing on whether an abuse of discretion has occurred. *Id.* Instead, a sentence constitutes an abuse of discretion when it is disproportionate to the seriousness of the circumstances surrounding the offense and the offender. *People v Milbourn*, 435 Mich 630, 636; 461 NW2d 1 (1990). “[A] trial court does not abuse its discretion in giving a sentence within the statutory limits established by the Legislature when an habitual offender’s underlying felony, in the context of his previous felonies, evidences that the defendant has an inability to conform his conduct to the laws of society.” *People v Hansford*, 454 Mich 320, 326; 562 NW2d 460 (1997).

Defendant’s sentence is within the limits authorized by the Legislature for an habitual offender, third offense, pursuant to MCL 769.11(1)(a); MSA 28.1083(1)(a). The maximum sentence of twenty years’ imprisonment is not more than twice the longest term prescribed for a first conviction of the underlying offense, which is ten years. See MCL 750.84; MSA 28.279. The minimum sentence of five

years' imprisonment does not exceed two-thirds of the maximum sentence. See *People v Thomas*, 447 Mich 390, 392 n 5; 523 NW2d 215 (1994). Additionally, defendant's sentence is proportionate to the serious nature of this crime and defendant's background. The court presided at trial and heard the testimony of the witnesses, including defendant's admission that he bit off the victim's ear during the brutal attack. The record reveals that the court considered the factors detailed in the presentence investigation report, including defendant's prior felony convictions and his inability to conform his conduct to the laws of society while on probation. Therefore, we are convinced that the trial court did not abuse its discretion in imposing defendant's sentence.

Affirmed.

/s/ Joel P. Hoekstra

/s/ Mark J. Cavanagh

/s/ Peter D. O'Connell