

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

JACK MCLAURIN JR.,

Defendant-Appellee.

UNPUBLISHED

February 19, 1999

No. 199851

Recorder's Court

LC No. 90-000615

Before: Gribbs, P.J., and Saad and P. H. Chamberlain,* JJ.

MEMORANDUM.

The people appeal by right a new judgment of sentence entered on defendant's 1990 convictions of assault with intent to rob while unarmed, MCL 750.88; MSA 28.283, and of being an habitual offender, fourth offense, MCL 769.12; MSA 28.1084, pursuant to defendant's post-appeal motion for relief from judgment under subchapter 6.500 of the court rules. We reverse and reinstate defendant's original sentences. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

The trial court lacked authority to declare defendant's original habitual offender sentence of 25 to 50 years disproportionate. Sentence review for compliance with the principle of proportionality is a function vested exclusively with the appellate courts and therefore only appellate courts are authorized to invalidate sentences for lack of proportionality. *People v Wybrecht*, 222 Mich App 160, 162, 168; 564 NW2d 903 (1997), lv den 456 Mich 945 (1998). While relief may only be sought under subchapter 6.500 once the time for filing a direct appeal or motion for resentencing has expired, the trial court does not assume the role of an "appellate court" when deciding motions under subchapter 6.500. See *People v Reed*, 449 Mich 375, 388-389; 535 NW2d 496 (1995). Moreover, it was not an abuse of the original trial judge's discretion to impose a sentence of 25 to 50 years, within the statutory limits established by the Legislature, where defendant's underlying felony, in the context of his previous felonies, evidenced an inability to conform his conduct to the law. *People v Hansford (After Remand)*, 454 Mich 320, 326; 562 NW2d 460 (1997).

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

That part of the October 11, 1996 order of the trial court which grants defendant's request for resentencing is reversed, defendant's new sentence of 10 to 20 years is vacated and defendant's original sentence of 25 to 50 years' imprisonment is reinstated. We do not retain jurisdiction.

/s/ Roman S. Gibbs

/s/ Henry William Saad

/s/ Paul H. Chamberlain