STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

CARLOS SOTO,

Defendant-Appellant.

UNPUBLISHED
July 23, 1999

No. 205803
Kent Circuit Court
LC No. 96-009759 FC

Before: Griffin, P.J., and Wilder and R. J. Danhof,* JJ.

PER CURIAM.

Defendant appeals by right from his jury trial convictions of two counts of assault with intent to do great bodily harm less than murder, MCL 750.84; MSA 28.279, and one count of possession of a firearm during the commission of a felony, MCL 750.227b; MSA 28.424(2). Defendant was sentenced as a fourth habitual offender, MCL 769.12; MSA 28.1084, to two years' imprisonment for the felony-firearm conviction and life imprisonment for each conviction of assault with intent to do great bodily harm less than murder. We affirm.

Defendant first argues that the trial court abused its discretion by imposing a disproportionately harsh sentence given the fact that the victims of the crime were not injured when defendant shot at them. We disagree. Whether to impose an enhanced sentence as authorized by the habitual offender act is discretionary with the sentencing court. *People v Bewersdorf*, 438 Mich 55, 66; 475 NW2d 231 (1991). "In reviewing sentences imposed for habitual offenders, the reviewing court must determine whether there has been an abuse of discretion." *People v Hansford (After Remand)*, 454 Mich 320, 323-324; 562 NW2d 460 (1997).

Pursuant to defendant's status as a fourth habitual offender, the trial court was authorized to sentence him to life imprisonment for each conviction of assault with intent to do great bodily harm less than murder. MCL 750.84; MSA 28.279 and MCL 769.12(1)(a); MSA 28.1084(1)(a). At sentencing, the court noted defendant's criminal record and concluded, based upon the evidence and the court's observation of defendant's behavior before and during trial, that defendant would "kill

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

somebody some day if given the opportunity," and that the only way to protect the community was to "separate [defendant] from the community for as long as the law allows." In its opinion denying defendant's motion for resentencing, the court stated that defendant had "frightened his first court-appointed counsel into withdrawing with serious threats of harm," and added that defendant's "intense anger . . . was longstanding and can be expected with virtual certainty to prompt repeat behavior in utter disregard for the lives and safety of others." Under these circumstances, the trial court did not abuse its discretion by imposing life sentences. *Hansford, supra* at 323-324.

Defendant next contends that the trial court abused its discretion by denying his motion for resentencing. The motion alleged that the court's articulation of its reasons for imposing life sentences was inadequate because no record was made of the observations leading the court to its conclusion regarding defendant's dangerousness. In denying the motion, the court stated that it based its sentences on "permissible inferences from the evidence and its observations before and during trial," and added that anger is frequently undetectable in the written record, but should not be ignored when observed by the trial court. *People v Shavers*, 448 Mich 389, 392-393; 531 NW2d 165 (1995); *Palenkas v Beaumont Hospital*, 432 Mich 527, 534, 536; 443 NW2d 354 (1989). No error occurred.

Defendant's final argument is that there was insufficient evidence to sustain his convictions of assault with intent to do great bodily harm less than murder. Viewing the evidence in a light most favorable to the prosecution, we are persuaded that a rational trier of fact could reasonably conclude that all elements of the offenses were proven beyond a reasonable doubt. *People v Wolfe*, 440 Mich 508, 515; 489 NW2d 748 (1992).

Affirmed.

/s/ Richard Allen Griffin
/s/ Kurtis T. Wilder
/s/ Robert J. Danhof