STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED September 3, 1999
v	No. 207990 Saginaw Circuit Court
VETO RILEY WISE, Defendant-Appellant.	LC No. 96-012298 FH

Before: Markman P.J., and Saad and P. D. Houk*, JJ.

PER CURIAM.

Defendant claims an appeal from his sentence of forty to sixty months in prison imposed on his plea-based convictions of attempted child abuse in the first degree, MCL 750.136b(2); MSA 28.331(2)(2); MCL 750.92(2); MSA 28.287(2), and habitual offender, fourth offense, MCL 769.12; MSA 28.1084. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

The underlying charge against defendant arose from an incident that occurred in 1992 in which defendant encouraged young children to engage in a physical altercation. Defendant pleaded guilty of attempted child abuse in the first degree, and acknowledged his status as an habitual offender. In exchange for the plea and defendant's testimony at another trial, the prosecution agreed to recommend that defendant's minimum term be capped at ten years.

The sentencing guidelines did not apply to the underlying offense of attempted child abuse in the first degree; nevertheless, guidelines were prepared for a related offense. Those guidelines recommended a minimum term range of thirty to forty months. The court sentenced defendant to forty to sixty months in prison, with credit for two days. The court stated that that sentence was within the guidelines, but also that it was proportionate to defendant's circumstances and the circumstances of the offense.

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

Defendant argues that he is entitled to resentencing because the sentence is disproportionate and was imposed in reliance on inapplicable guidelines. We disagree and affirm.

Although the parties recognized at sentencing that the minimum sentencing range of 30 to 40 months was not applicable to defendant because it was based on the offense of child torture-- there being no guidelines for attempted child abuse in the first degree prior to 1999-- defendant's counsel nevertheless argued that defendant should be sentenced within this range. Having in fact received such a sentence, defendant is in no position now to claim that he is entitled to resentencing on the basis that incorrect guidelines were used. Indeed, the sentencing guidelines do not even apply to habitual offenders. *People v Williams*, 223 Mich App 409, 412; 566 NW2d 649 (1997). The standard of review for a sentence imposed on an habitual offender is abuse of discretion. If an habitual offender's underlying criminal history demonstrates that he is unable to conform his conduct to the law, a sentence within the statutory limits does not constitute an abuse of discretion. *People v Hansford (After Remand)*, 454 Mich 320, 323-324, 326; 562 NW2d 460 (1997). As a fourth habitual offender, defendant could have been sentenced to life in prison. MCL 769.12(1)(a); MSA 28.1084(1)(a). Defendant had an extensive criminal record and history of substance abuse. By his actions, he encouraged very young children to engage in physically dangerous activity. His sentence does not constitute an abuse of discretion under the circumstances. *People v Compagnari*, 233 Mich App 233, 235-236; 590 NW2d 302 (1998); *Hansford, supra*.

Affirmed.

/s/ Stephen J. Markman
/s/ Henry William Saad
/s/ Peter D. Houk