

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

CARL ENOCH WIDGER,

Defendant-Appellant.

UNPUBLISHED
October 29, 1999

No. 207598
Manistee Circuit Court
LC No. 93-002341 FC

Before: Markey, P.J., and Holbrook, Jr., and Neff, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of four counts of first-degree criminal sexual conduct (CSC I), MCL 750.520b(1)(a); MSA 28.788(2)(1)(a) and MCL 750.520b(1)(b); MSA 28.788(2)(1)(b), and habitual offender, fourth offense, MCL 769.12; MSA 28.1084. Defendant was originally sentenced to serve two terms of life imprisonment, and two terms of forty to eighty years' imprisonment, all sentences to run concurrent. This Court affirmed defendant's convictions, but remanded for resentencing. On remand, the lower court reduced defendant's two life terms to consecutive prison terms of forty-seven to eighty-two years. Defendant's other two sentences remanded unchanged. We affirm.

Defendant contends that his new sentence is disproportionate. We disagree, but only because we are compelled to do so by recent pronouncements from the Michigan Supreme Court. We review sentences imposed for habitual offenders for an abuse of discretion. *People v Cervantes*, 448 Mich 620, 627; 532 NW2d 831 (1995). "[A] given sentence can be said to constitute an abuse of discretion if that sentence violates the principle of proportionality, which requires sentences imposed by the trial court to be proportionate to the seriousness of the circumstances surrounding the offense and the offender." *People v Milbourn*, 435 Mich 630, 635; 461 NW2d 1 (1990). See also *Cervantes*, *supra* at 626-630.

In *People v Hansford (After Remand)*, 454 Mich 320; 562 NW2d 460 (1997), the Supreme Court was asked to review this Court's determination that a 40 to 60 year sentence imposed for a habitual offender, fourth offense, was disproportionate. The defendant in *Hansford* had been convicted

of entering an occupied dwelling without the owner's permission, MCL 750.115; MSA 28.310, and receiving or concealing stolen property over \$100, MCL 750.535; MSA 28.803. *Id.* at 322. The defendant's prior record consisted "exclusively of larcenies and stolen property offenses, and a misdemeanor fleeing and eluding offense." *Id.* at 323, n 4, quoting *People v Hansford*, unpublished opinion per curiam of the Court of Appeals, issued April 11, 1995 (Docket No. 165364). In reversing this Court's holding, the Supreme Court made the following sweeping pronouncement: "We believe that 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." *Hansford, supra* at 326.

In her *Hansford* dissent, Justice Kelly opined that in announcing this rule of law, the majority had abandoned the *Milbourn* proportionality standard in favor of "a new standard of review for the sentencing of habitual offenders." *Hansford, supra* at 327. While we share Justice Kelly's misgivings about the *Hansford* standard, we disagree that it has replaced the *Milbourn* proportionality standard as the touchstone of sentencing review for habitual offenders. Rather, we believe the *Hansford* standard simply establishes that when it applies, the sentence at issue is by definition proportionate, and thus not an abuse of discretion.¹

Defendant's sentence is within the limits authorized under MCL 769.12(1)(a); MSA 28.1084(1)(a). The presentence investigation report shows that defendant has an extensive criminal record. It is clear from this record that all prior attempts to rehabilitate defendant have failed. We believe that pursuant to *Hansford*, given the serious nature of the underlying crime and the clear evidence of defendant's inability to conform to the laws of society, defendant's sentence is proportionate.² Thus, we see no abuse of discretion. *Hansford, supra* at 326; *People v Nelson*, 234 Mich App 454, 464; 594 NW2d 114 (1999).

Affirmed.

/s/ Jane E. Markey

/s/ Donald E. Holbrook, Jr.

/s/ Janet T. Neff

¹ We note that given the breadth of the *Hansford* standard, there is a real danger that it will, in practice, engulf the *Milbourn* proportionality standard, thereby rendering the *Milbourn* standard all but meaningless with respect to appellate review of sentencing of habitual offenders. We leave it to the Supreme Court to clarify if this is the result intended.

² We are also struck by defendant's attitude toward his offenses. Even at this late date, defendant continues to show a complete lack of remorse.