

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

RICKY LEE CALVIN,

Defendant-Appellant.

UNPUBLISHED

November 12, 1999

No. 214030

Muskegon Circuit Court

LC No. 83-025329 FC

Before: Whitbeck, P.J., and Gribbs and White, JJ.

MEMORANDUM.

Defendant appeals by right his sentence of thirteen to twenty two and one half years' imprisonment, imposed upon his 1984 guilty plea based convictions of breaking and entering an occupied dwelling with intent to commit larceny, MCL 750.110; MSA 28.305, and habitual offender, second offense, MCL 769.10; MSA 28.1082, on remand pursuant to an order of the Michigan Supreme Court, *People v Calvin*, 451 Mich 873; 549 NW2d 564 (1996). We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

On appeal, defendant challenges the proportionality of his sentence. In particular, defendant contends the sentencing court failed to consider various factors, such as his alleged remorse, his prison misconduct and education record, and his alleged need for psychological/ substance abuse treatment. Defendant also contends the sentencing court failed to articulate adequate reasons for the sentence imposed, and that his thirteen year minimum sentence leaves no room for the principle of sentence proportionality to operate on an offender whose criminal conduct is far more aggravated than defendant's. We disagree.

The sentencing guidelines do not apply to habitual offenders. *People v Cervantes*, 448 Mich 620, 625; 532 NW2d 831 (1995). If an habitual offender's underlying criminal and felony history demonstrate 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). Here, defendant's sentence is within the statutory limits, and is in fact less than the maximum possible enhanced sentence of fifteen to twenty two and one half years. The

sentencing court correctly focused upon the seriousness of the circumstances surrounding the breaking and entering offense and defendant's rather extensive criminal record. Contrary to defendant's argument, the court expressly considered defendant's educational achievements and minimal prison misconduct record, and it is questionable whether there is anything in the record that qualifies as an expression of remorse or an indication that defendant needs mental health or substance abuse treatment. Defendant's sentence is proportionate, and the lower court did not abuse its discretion.

We are also unpersuaded by the arguments raised in the supplemental brief filed by defendant in propria persona, challenging the lower court's failure to strike information in the presentence investigator's report (PSIR) about the criminal sexual conduct charges dismissed in plea bargaining. The lower court adequately responded to and *rejected* defendant's challenge to the sufficiency of the preliminary examination evidence to support the allegations of sexual assault in the PSIR relative to the breaking and entering on April 11, 1983. Defendant has not identified any inaccurate statements in the PSIR regarding the fingerprint evidence or victim's allegations concerning the second breaking and entering on April 27, 1983.

Affirmed.

/s/ William C. Whitbeck

/s/ Roman S. Gibbs

/s/ Helene N. White