

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

OSCAR HOWARD,

Defendant-Appellant.

UNPUBLISHED
October 31, 2000

No. 215208
Wayne Circuit Court
LC No. 98-005068

Before: Bandstra, C.J., and Saad and Meter, JJ.

PER CURIAM.

Defendant appeals as of right from his bench trial conviction of unlawfully driving away an automobile, MCL 750.413; MSA 28.645. The court sentenced defendant to 3 to 7½ years in prison as a second habitual offender, MCL 769.10; MSA 28.1082. We affirm.

Defendant contends that the trial court did not make specific findings of fact because it failed to articulate which specific facts supported the elements of unlawfully driving away an automobile. In support of his argument, defendant relies on MCR 6.403. In regard to this court rule, this Court has stated that factual findings are sufficient as long as it appears that the trial court was aware of the issues in the case and correctly applied the law. *People v Legg*, 197 Mich App 131, 134; 494 NW2d 797 (1992). The trial court does not need to make specific findings of fact regarding each element of the crime and remand is not warranted where it is clear that the court was aware of the factual issues, resolved the issues, and that further explication would not facilitate appellate review. *Legg, supra* at 134

Here, the trial court stated that it found the testimony of complainant, Ronald Rizk, to be mostly credible. The court stated that Rizk testified that he did not give up his car willingly, but concluded that the prosecutor had not proved carjacking beyond a reasonable doubt. The court concluded that the prosecution had proven the lesser offense of unlawfully driving away an automobile. The trial court made sufficient findings of fact.

Defendant also asserts that the trial court's findings of fact were clearly erroneous because the trial court was inconsistent when it apparently did not believe that Rizk was threatened with a gun, but

believed defendant took the car without permission. This Court reviews the trial court's findings of fact for clear error. *People v Lester*, 232 Mich App 262, 271; 591 NW2d 267 (1998).

Defendant urges this Court to reexamine the credibility of the witnesses. This Court gives great deference to the superior ability of the trial court to assess the credibility of a witness.¹ *People v Eggleston*, 149 Mich App 665, 671; 386 NW2d 637 (1986). Questions regarding the credibility of witnesses are a matter for the trial court, as the trier of fact, to decide. *People v Fetterley*, 229 Mich App 511, 545; 583 NW2d 199 (1998). Rizk testified that defendant was in possession of his vehicle, and defendant drove it away without Rizk's permission. The trial court determined that these were willful acts by defendant and without the authority or permission of Rizk. This satisfies all of the elements of unlawfully driving away an automobile. *People v Hendricks*, 200 Mich App 68, 71; 503 NW2d 689 (1993). The trial court was in the best position to assess which parts of Rizk's testimony were credible and, if it decided that parts of Rizk's testimony were not credible, that decision was within its discretion. *Fetterley, supra* at 545. Because the evidence clearly support the court's findings, the court's findings were not clearly erroneous.

Finally, defendant maintains that the trial court abused its discretion when it sentenced defendant to a minimum of three years. In reviewing sentences imposed for habitual offenders, this 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).

Defendant cites to the sentencing guidelines and compares the sentence recommended by the guidelines to the sentence defendant received as a second habitual offender. This argument is without merit because the sentencing guidelines do not apply to habitual offenders and appellate review of an habitual offender's sentence must be done without reference to the sentencing guidelines. *People v Zinn*, 217 Mich App 340, 349; 551 NW2d 704 (1996). Further, defendant asserts that the trial court failed to consider several mitigating factors when it sentenced him. Review of defendant's sentence is limited to considering whether the sentence is within the statutory limits established by the Legislature and if the defendant has the ability to conform his conduct to the laws of society. *Hansford, supra* at 326.

Defendant's sentence was within the statutory limits. Unlawfully driving away an automobile is an offense punishable by imprisonment for a maximum of five years. MCL 750.413; MSA 28.645. Pursuant to MCL 769.10; MSA 28.1082, the trial court was allowed to enhance defendant's sentence by 1½ times the maximum term for the underlying offense. Thus, defendant's maximum sentence of 7½ years was within the statutory limits. *People v Reynolds*, 240 Mich App 250, 252; 611 NW2d 316 (2000). Although defendant expressed remorse and expressed an interest in being an upstanding member of society, the prosecutor produced evidence of defendant's sordid criminal history, which shows that defendant has an inability to conform to the laws of society. *Hansford, supra* at 326.

¹ In review of a bench trial, this Court will not weigh the credibility of a witness or substitute its assessment of the testimony for that of the trial court. MCR 2.613(C).

In light of the seriousness of the crime, defendant's criminal history, and the fact that the sentence was within the statutory limits, the trial court did not abuse its discretion. *Reynolds, supra* at 252-253.

Affirmed.

/s/ Richard A. Bandstra

/s/ Henry William Saad

/s/ Patrick M. Meter