

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

LESLIE EARL HOLLIS,

Defendant-Appellant.

UNPUBLISHED

February 23, 2001

No. 219692

Oakland Circuit Court

LC No. 99-164248-FH

Before: Hood, P.J., and Doctoroff and K. F. Kelly, JJ.

MEMORANDUM.

Defendant was convicted, following a jury trial, of negligent homicide, MCL 750.324; MSA 28.566. Defendant was sentenced as an habitual offender, fourth offense, MCL 769.12; MSA 28.1084, to four to fifteen years' imprisonment. He appeals as of right, and we affirm.

On October 24, 1998, defendant was employed as a driver for Tandem Staffing. Defendant fell asleep while driving a company vehicle and crossed the center lane. He struck a vehicle driven by Julian Refalo, whose son, Brian, was in the passenger seat. Brian was killed instantly as a result of the accident, and his father was also injured. At the scene, defendant admitted to falling asleep at the wheel. He consented to a breath test that did not detect the presence of alcohol. Defendant refused to take a blood test. Three days later, defendant was involved in a shooting.

Defendant was originally charged with one count of vehicular manslaughter, MCL 750.321; MSA 28.553, and one count of felonious driving, MCL 752.191; MSA 28.661. The jury convicted defendant of negligent homicide. At sentencing, the trial court noted defendant's extensive criminal history, his extensive poor driving record, and his current incarceration for two to fifteen years' imprisonment for convictions that arose out of a shooting on March 27, 1998. Citing to the extensive criminal history and the lack of remorse, the trial court sentenced defendant to four to fifteen years' imprisonment as an habitual offender, fourth offense.

Defendant argues that a four-year minimum sentence for an offense based on ordinary negligence violates due process and the principle of proportionality. We disagree. Contrary to the argument of defendant, defendant was not sentenced to a four-year minimum term for an offense characterized as a high misdemeanor. Rather, defendant was sentenced as an habitual offender. When sentence enhancement is sought based on a statute, due process is satisfied by a

reasonable opportunity to challenge the accuracy of the information relied on in passing sentence. *People v Eason*, 435 Mich 228, 234; 458 NW2d 17 (1990). Review of the sentencing proceeding in this case reveals that defendant was afforded the opportunity to challenge the information in the presentence investigation report (PSIR), and therefore, his due process challenge to his sentence is without merit. Furthermore, we cannot conclude that the trial court abused its discretion in sentencing defendant to four to fifteen years' imprisonment. *People v Reynolds*, 240 Mich App 250, 252; 611 NW2d 316 (2000) citing *People v Hansford (After Remand)*, 454 Mich 320, 323-324; 562 NW2d 460 (1997). An habitual offender sentence does not constitute an abuse of discretion when it is within the statutory limits established by the Legislature and when the underlying felony, examined in the context of other convicted felonies, evidences the defendant's inability to conform his conduct to the laws of society. *Id.* Defendant has demonstrated an inability to conform his conduct to the laws of society, and we cannot conclude that the trial court abused its discretion.

Affirmed.

/s/ Harold Hood
/s/ Martin M. Doctoroff
/s/ Kirsten Frank Kelly