

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

BRUCE CHARLES MIKULYUK,

Defendant-Appellant.

UNPUBLISHED
December 13, 2002

No. 234223
Cass Circuit Court
LC No. 98-009375-FH

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

BRUCE CHARLES MIKULYUK,

Defendant-Appellant.

No. 234246
Cass Circuit Court
LC No. 98-009376-FH

Before: Sawyer, P.J., and Gage and Talbot, JJ.

PER CURIAM.

In these consolidated appeals, defendant appeals as of right his convictions, following a bench trial, of one count of operating a motor vehicle under the influence of intoxicating liquor (OUIL) (third offense), MCL 257.625, and one count of resisting and obstructing a police officer, MCL 750.479. The trial court sentenced defendant as a fourth habitual offender, MCL 769.12, to three to fifteen years' imprisonment for each count, to be served concurrently. We affirm.

Officers observed defendant attempting to escape a vehicle that was stuck in a snow bank. As the officers approached the vehicle, defendant fled the scene, but the officers apprehended defendant on foot a short time later, hiding near a bar. The officers detected the odor of alcohol on defendant and, after administering sobriety tests, concluded that defendant had been driving under the influence of alcohol. After defendant refused to take a breath test, the officers obtained a warrant for a sample of defendant's blood. Defendant refused to cooperate and eventually had to be restrained by officers while a hospital technician drew the blood sample.

Defendant argues the sentencing court abused its discretion in imposing a disproportionate sentence. The judicial sentencing guidelines in effect at the time of the instant offense do not apply because defendant was sentenced as an habitual offender. *People v Cervantes*, 448 Mich 620, 630; 532 NW2d 831 (1995); *People v Reynolds*, 240 Mich App 250, 253 n 1; 611 NW2d 316 (2000). In reviewing sentences imposed for habitual offenders, the reviewing court determines whether there has been an abuse of discretion. *People v Hansford (After Remand)*, 454 Mich 320, 323-324; 562 NW2d 460 (1997). “A trial court does not abuse its discretion in sentencing an habitual offender within the statutory limits established by the Legislature when the offender’s underlying felony, in the context of previous felonies, evinces the defendant’s inability to conform his conduct to the laws of society.” *Reynolds, supra* at 252, citing *Hansford, supra*. In reaching its determination, a court can consider the seriousness of the underlying crime, the defendant’s criminal history, and the defendant’s ability or inability to reform. *Hansford, supra* at 326. “[‘]f an habitual offender’s underlying felony and criminal history demonstrate that he is unable to conform his conduct to the law, a sentence within the statutory limit is proportionate.” *People v Colon*, 250 Mich App 59, 65; 644 NW2d 790 (2002), quoting *People v Compeau*, 244 Mich App 595, 598-599; 625 NW2d 120 (2001).

Because defendant was a fourth habitual offender, his maximum sentence was fifteen years. MCL 769.12. At sentencing, the trial court acknowledged that defendant has a very serious criminal history that involves substance abuse issues. The court stated that defendant drove into a ditch while intoxicated, ran from the police, and was subsequently arrested for resisting police at the hospital. The court also recognized that defendant failed to appear for his original sentencing date, and if he had appeared, mere local jail time may have been appropriate. The sentencing court can consider the facts underlying uncharged offenses and pending charges. *People v Ewing (After Remand)*, 435 Mich 443, 446 (Brickley, J.), 473 (Boyle, J.); 458 NW2d 880 (1990); *People v Durfee*, 215 Mich App 677, 683; 547 NW2d 344 (1996). Given the circumstances of defendant’s crime and his inability to conform his conduct to the laws of this state, the sentencing court did not abuse its discretion. See *Reynolds, supra* at 253; *Colon, supra* at 67.

In his supplemental brief, defendant raises a rather confusing issue. It appears defendant argues that in *People v Doyle*, 451 Mich 93; 545 NW2d 627 (1996), the Michigan Supreme Court improperly decided the retroactive effect of *People v Bewersdorf*, 438 Mich 55; 475 NW2d 231 (1991). Defendant now essentially asks this Court to second-guess our Supreme Court’s decisions in *Bewersdorf* and *Doyle*, and find that the trial court improperly applied *Doyle* to defendant’s case.

In *Bewersdorf*, the Supreme Court interpreted the relationship between the habitual offender act, MCL 769.10 *et seq.*, and the Motor Vehicle Code and held that the habitual offender act is applicable to third and subsequent convictions for operating a motor vehicle while under the influence of intoxicating liquor (OUIL).¹ Subsequently, in *Doyle*, the Court held that

¹ In rendering this decision, the Court effectively overruled *People v Tucker*, 177 Mich App 174; 441 NW2d 59 (1989), in which this Court held that a conviction of operating a vehicle while under the influence of intoxicating liquor, third offense, cannot serve as the underlying felony for an habitual offender charge.

because *Bewersdorf* was not an unforeseeable decision that had the effect of changing the law, *Bewersdorf* applied retroactively.

In his brief on appeal, defendant states that *Bewersdorf* and *Doyle* were wrongly decided because the Supreme Court improperly “substituted [its] perception[] of what the law conveyed as opposed to how society perceived what the law stated.” However, a decision of the Supreme Court is binding on this Court until the Supreme Court overrules itself. *O’Dess v Grand Trunk Western Railroad Co*, 218 Mich App 694, 699-700; 555 NW2d 261 (1997). Therefore, we will not revisit the holdings in *Bewersdorf* and *Doyle*.

Affirmed.

/s/ David H. Sawyer
/s/ Hilda R. Gage
/s/ Michael J. Talbot