

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ERIC JAMES SAUER,

Defendant-Appellant.

UNPUBLISHED
February 26, 2013

No. 308011
Oakland Circuit Court
LC No. 2011-237260-FH

Before: RIORDAN, P.J., and HOEKSTRA and O'CONNELL, JJ.

PER CURIAM.

Defendant pleaded guilty to two counts of felonious assault, MCL 750.82, and one count of domestic violence, MCL 750.81. The trial court sentenced him as a fourth habitual offender, MCL 769.12, to concurrent prison terms of 3 to 15 years for each assault conviction and 53 days for the domestic violence conviction. Defendant appeals by delayed leave granted. We remand for further proceedings consistent with MCR 6.310(C) and *People v Brown*, 492 Mich 684, 699; 822 NW2d 208 (2012).

MCR 6.302(B)(2) provides that before accepting a guilty plea, the trial court must “advise the defendant . . . and determine that each defendant understands . . . the maximum possible prison sentence for the offense[.]” In this case, the trial court informed defendant at the plea proceeding that the maximum possible sentence for a conviction of felonious assault was four years. Although four years is the correct statutory maximum for a conviction of felonious assault, because of defendant’s status as a fourth habitual offender, his maximum possible sentence upon conviction was 15 years, MCL 769.12(1)(c). The trial court did not inform defendant of his maximum possible sentence as an habitual offender before he pleaded guilty. Accordingly, defendant’s plea was defective because it was not an understanding plea. *Brown*, 492 Mich at 699. Therefore, we remand this matter to the trial court so that defendant may be afforded the remedy provided in MCR 6.310(C). *Brown*, 492 Mich at 699. On remand, defendant must be informed of the maximum enhanced sentences and given the option of allowing his plea and sentences to stand or of withdrawing his plea. *Brown*, 492 Mich at 699. If he withdraws his plea, the trial court must vacate defendant’s convictions and sentences, and the matter may proceed to trial. *Id.*

We reject defendant’s other arguments, i.e., that he is entitled to resentencing because the trial court erroneously believed that enhancement of his maximum sentences was mandatory in

light of his habitual offender status, or because the trial court's 15-year maximum sentences for the felonious assault convictions are disproportionate. Defendant correctly states that a trial court has discretion whether to impose an enhanced sentence on an habitual offender. *People v Bonilla-Machado*, 489 Mich 412, 429; 803 NW2d 217 (2011). However, "absent clear evidence that the sentencing court incorrectly believed that it lacked discretion, the presumption that a trial court knows the law must prevail." *People v Knapp*, 244 Mich App 361, 389; 624 NW2d 227 (2001). In this case, there is no indication in the record that the trial court believed that it lacked discretion to enhance defendant's sentences. Further, defendant raised this issue in a motion for resentencing, and the trial court denied that motion, thereby indicating that its decision to enhance defendant's sentences was not founded on a mistaken belief that it lacked discretion to do so. Finally, considering the serious nature of the offenses, which included defendant choking his girlfriend until she lost consciousness, along with defendant's extensive criminal history, the trial court did not abuse its discretion by enhancing the statutory maximum sentences for defendant's felonious assault convictions to 15 years. The enhanced sentences are not disproportionate to the seriousness of the offense and the offender. *People v Hansford (After Remand)*, 454 Mich 320, 326; 562 NW2d 460 (1997); *Knapp*, 244 Mich App at 389-390.

Remanded for further proceedings in accordance with this opinion. We do not retain jurisdiction.

/s/ Michael J. Riordan
/s/ Joel P. Hoekstra
/s/ Peter D. O'Connell