

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ARTHUR PAUL KITCHEN,
a/k/a ARTHUR PAL KITCHEN,

Defendant-Appellant.

UNPUBLISHED

June 22, 2001

No. 223287

Kent Circuit Court

LC No. 98-012315-FH

Before: Neff, P.J., and Doctoroff and Wilder, JJ.

MEMORANDUM.

Following a jury trial, defendant was convicted of delivery of less than fifty grams of the controlled substance heroin, MCL 333.7401(2)(a)(iv); MSA 14.15(7401)(2)(a)(iv). He was sentenced as a third felony offender, MCL 769.11; MSA 28.1083, to 3-1/2 to 40 years' imprisonment to run consecutively to his sentence for prison escape, for which he was on parole when he committed the instant offense. Defendant appeals as of right. We affirm.

Defendant argues that considering the circumstances of this case, the background of defendant, and the fact that his sentence is much higher than the average sentence for similar crimes, his sentence is disproportionate. Specifically defendant contends that he should have been sentenced to lifetime probation rather than prison. We disagree.

This Court reviews a sentence imposed by the trial court under the habitual offender statute for an abuse of discretion. *People v Hansford (After Remand)*, 454 Mich 320, 326; 562 NW2d 460 (1997); *People v Reynolds*, 240 Mich App 250, 252; 611 NW2d 316 (2000). A trial court does not abuse its discretion in sentencing an habitual offender within the statutory limits when the offender's underlying felony, in the context of previous felonies, indicates the defendant's inability to conform his conduct to the laws of society. *Reynolds, supra; Hansford, supra*.

At sentencing, the trial court first recognized that defendant was "no stranger to the criminal justice system", having been previously convicted of the crimes of receiving and concealing stolen property under \$100, aggravated assault, grand larceny, breaking and entering an automobile, manslaughter, and prison escape. The trial court then stated that defendant's crime appeared to be mitigated, in part, by the fact that he provided drugs to someone who

wanted them.¹ In addition, as indicated above, defendant was on parole for the prison escape conviction at the time of the present offense. Therefore, because the evidence shows defendant is unable to conform his conduct to the law and since his three years, six months minimum sentence is within the statutory guidelines for habitual offenders, his sentence is proportionate. *Hansford supra*; See also MCL 769.11; MSA 28.1083 and MCL 333.7401(2)(a)(iv); MSA 14.15(7401)(2)(a)(iv). Further, based on defendant's previous convictions and the policy of this state favoring individualized sentencing, defendant's contention that his sentence should be vacated because it was much higher than average sentences for similar crimes is without merit. *People v Sabin (On Second Remand)*, 242 Mich App 656, 661; 620 NW2d 19 (2000), citing *People v Adams*, 430 Mich 679, 686; 425 NW2d 437 (1988). The trial court properly acted within its discretion in giving defendant a higher than "average" sentence.

Affirmed.

/s/ Janet T. Neff
/s/ Martin M. Doctoroff
/s/ Kurtis T. Wilder

¹ While we disagree with the trial court's reasoning in this regard, we note that the trial court apparently made every effort to consider all of the "circumstances of the case" before sentencing defendant.