

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

RUSSELL LEONARD KERPERIEN,

Defendant-Appellant.

UNPUBLISHED

June 28, 1996

No. 148785

LC No. 90043653 FC

ON REHEARING

Before: Marilyn Kelly, P.J., and Gribbs and W.E. Collette,* Jr.

PER CURIAM.

Defendant pleaded guilty to unarmed robbery and habitual offender, third offense. MCL 750.530; MSA 28.798, MCL 769.11; MSA 28.1083. On March 8, 1996, we issued our opinion in this matter. We held that the trial court abused its discretion by failing to calculate and consider the guidelines' range for the underlying offense when sentencing defendant as an habitual offender. As authority, our opinion relied on *People v Gatewood*, 214 Mich App 211; 542 NW2d 605 (1995). However, on March 19, 1996, the Supreme Court issued an order vacating the opinion in *Gatewood*. It held that appellate review of habitual offender sentences using the sentencing guidelines in any fashion is inappropriate. *People v Gatewood*, 450 Mich 1021; 546 NW2d 252 (1996).

Therefore, while a sentencing information report must be completed on the underlying offense, its only purpose is to aid in the development of future guidelines to cover habitual offenders. *People v Elliott*, 215 Mich App 259, 261; 544 NW2d 748 (1996). Our review of an habitual offender sentence is limited to considering whether the trial court abused its discretion by fashioning a disproportionate sentence as defined in *People v Milbourn*.¹ *People v Gatewood (On Remand)*, ___ Mich App ___; ___ NW2d ___ (Docket No. 193626, issued 5/14/96).

* Circuit judge, sitting on the Court of Appeals by assignment.

In the instant case, in light of the circumstances surrounding the offense and the background of the offender, we conclude that defendant's sentence does not violate the principle of proportionality. Therefore, the trial court did not abuse its discretion in sentencing defendant.

We vacate our previous opinion and affirm defendant's conviction and sentence. We remand this matter to the trial court for completion of a sentencing information report on the underlying offense.

/s/ Marilyn Kelly

/s/ Roman S. Gibbs

/s/ William E. Collette

¹ 435 Mich 630; 461 NW2d 1 (1990).