

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

GREGORY DEAN ABFALTER,

Defendant-Appellant.

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UNPUBLISHED

September 17, 1996

No. 164530

LC No. 93-65248-FH

Before: Markey, P.J., and McDonald and M. J. Talbot\*, JJ.

PER CURIAM.

Defendant appeals by right his convictions of breaking and entering an occupied dwelling, MCL 751.110; MSA 28.305, and assault and battery, MCL 750.81; MSA 28.276. Defendant was sentenced to eight to twenty years imprisonment after he pleaded guilty as a fourth time habitual-offender, MCL 769.12(1)(a); MSA 28.1084(1)(a). We affirm.

Defendant first argues that there was insufficient evidence to support his breaking and entering conviction. We disagree. Defendant was seen with the stolen property near and at the scene of the breaking and entering shortly after it occurred.. We find this circumstantial evidence and the reasonable inferences derived therefrom sufficient to support finding defendant broke into the building and entered with the intent to commit a larceny therein. *People v Adams*, 202 Mich App 385, 390; 509 NW2d 530 (1994); *People v Greenwood*, 209 Mich App 470, 472; 531 NW2d 771 (1995). The fact that this evidence placed defendant at or near the scene in close temporal proximity to the time of the crime distinguishes this case from those cited by defendant where this Court has found mere possession of stolen property alone insufficient to convict a person of breaking and entering. See, *People v McDonald*, 163 Mich 552, 555; 128 NW 737 (1910); *People v Robinson*, 154 Mich App 92, 95; 397 NW2d 229 (1986); *People v Rankin*, 52 Mich App 130, 134; 216 NW2d 620 (1974).

Defendant next argues that the sentence for his habitual offender conviction violates the principle of proportionality. We disagree. Defendant was sentenced to eight to twenty years under the

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

habitual offender fourth statute which provides for sentence enhancement up to life imprisonment or a lesser term. MCL 769.12(1)(a); MSA 28.1084(1)(a). In sentencing defendant, the trial court noted the seriousness of the crime of breaking and entering an occupied dwelling, the fact that defendant had committed this crime previously and defendant's poor potential for reformation. In light of these considerations, we find defendant's characterization of his crime as a simple bicycle theft ignores the true seriousness of his offense. We are not persuaded that the trial court abused its discretion in sentencing defendant. *People v Milbourn*, 435 Mich 630; 461 NW2d 1 (1990).

Affirmed.

/s/ Jane E. Markey  
/s/ Gary R. McDonald  
/s/ Michael J. Talbot