

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

RAYMOND LOUIS TREADWAY,

Defendant-Appellant.

UNPUBLISHED

September 17, 1996

No. 176968

LC No. 93-67584-FH

Before: Doctoroff, C.J. Hood and Bandstra, JJ.

PER CURIAM.

Defendant was convicted following a bench trial of larceny from a person, MCL 750.357; MSA 28.589, and habitual offender fourth, MCL 769.12; MSA 28.1084. He was sentenced to ten to thirty years and appeals as of right. We affirm.

Defendant approached the victim, a handicapped individual who utilizes a walker to ambulate, and grabbed her purse. The victim was walking to her apartment, where she lived alone, from her car at the time of the attack and was frightened as a result of the defendant's conduct. The victim immediately called the police who traced defendant's footprints in the snow. The footprints led from the victim's apartment to an automobile where the police found defendant hiding and arrested him.

Defendant first contends that the trial court improperly shifted the burden of proof to him and that, therefore, he was denied a fair trial. In convicting defendant, the court stated on the record that the prosecution had the burden of proof and had met that burden. In making that finding, the judge commented on defendant's credibility as a witness and determined that defendant's attempts to explain away the prosecution's case were not credible. Comments regarding the credibility of a defense theory that, in essence, are merely comments on the evidence should not be construed to suggest that the trial judge misunderstood the burden of proof. *People v Carl Fields*, 450 Mich 94, 107; 538 NW2d (1995). The court concluded that the prosecution's evidence was not discredited by defendant's testimony and, therefore, that the prosecution had met its burden. There is no evidence that the trial court believed that defendant had to prove or disprove any portion of the case. No error was committed by the trial court.

Defendant also contends that the trial court abused its discretion in sentencing him as a fourth offense habitual offender to ten to thirty years. He maintains that his sentence was disproportionate. The sentencing guidelines did not apply to defendant due to his habitual offender status. *People v Gatewood*, 450 Mich 104 (Order, 3/19/96). The trial court had discretion to enhance the sentence to a life sentence or a lesser term. MCL 769.12; MSA 28.1084. However, the principle of proportionality still applies and that requires that "sentences imposed by the trial court be proportionate to the seriousness of the circumstances surrounding the offense and the offender." *People v Milbourn*, 435 Mich 630, 636; 461 NW2d 1 (1990). The judge must take into account the nature of the offense and the background of the offender. *Id.* at 651. The court reviewed the nature of the offense, defendant's background and his potential for rehabilitation. See *People v Odendahl*, 200 Mich App 539, 541; 505 NW2d 16 (1993). The court found that the nature of the crime was predatory and that the prey, a handicapped individual, was vulnerable. The court also considered that defendant had been previously convicted of five other felonies and nine misdemeanors and fashioned a sentence based on both the offense and the offender. The sentence imposed was not disproportionate nor did it constitute an abuse of discretion.

Affirmed.

/s/ Martin M. Doctoroff

/s/ Harold Hood

/s/ Richard A. Bandstra