

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

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

HERMENEJILDO MENDIOLA,

Defendant-Appellant.

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UNPUBLISHED

September 27, 1996

No. 183773

LC No. 94-037562-FH

Before: J.H. Gillis, P.J., and G.S. Allen and J.B. Sullivan, JJ.\*

MEMORANDUM.

Defendant pleaded guilty to operating a motor vehicle while under the influence of liquor, third offense, MCL 257.625(7)(d); MSA 9.2325, and habitual offender, second offense, MCL 769.10; MSA 28.1082. He was sentenced to two-and-a-half to seven-and-a-half years' imprisonment. He appeals as of right. We affirm. This case has been decided without oral argument pursuant to MCR 7.214(A).

Defendant's sentence does not violate the principle of proportionality. *People v Milbourn*, 435 Mich 630, 661; 461 NW2d 1 (1990); *People v McCrady*, 213 Mich App 474, 483; 540 NW2d 718 (1995). In sentencing defendant, the trial court properly considered his extensive criminal history and substance abuse. Moreover, as a second habitual offender, defendant was subject to a minimum sentence of up to five years in prison. MCL 257.625(7)(d); MSA 9.2325; MCL 769.10; MSA 28.1082; *People v Tanner*, 387 Mich 683; 199 NW2d 202 (1972). Under the circumstances, defendant's two-and-a-half year minimum sentence is not disproportionate.

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\*Former Court of Appeals judges, sitting on the Court of Appeals by assignment pursuant to Administrative Order 1996-3.

Affirmed.

/s/ John H. Gillis

/s/ Glenn S. Allen, Jr.

/s/ Joseph B. Sullivan