STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

MICHAEL L. YORK EL, a/k/a MICHAEL LEWIS YORK EL, a/k/a MICHAEL LEWIS YORK,

Defendant-Appellant.

UNPUBLISHED
December 20, 1996

No. 187415

Oakland Circuit Court
LC No. 92-118903-FC

Before: Fitzgerald, P.J., and Holbrook, Jr., and E.R. Post,* JJ.

PER CURIAM.

Defendant was convicted by a jury of assault with intent to inflict great bodily harm, MCL 750.84; MSA 28.279, and possession of a firearm during the commission of a felony, second offense, MCL 750.227b; MSA 28.424(2). He subsequently pleaded guilty of being an habitual offender, fourth offense, MCL 769.12; MSA 28.1084. He was sentenced to serve consecutive prison terms of five years on the felony firearm conviction and four to twenty years on the habitual offender conviction. He appealed as of right and this Court affirmed defendant's convictions but remanded to the trial court to determine whether defendant had an opportunity to review his presentence investigation report. On remand, the court granted defendant's request for resentencing and reimposed the original sentences. Defendant has appealed again to this Court, asserting that the combined minimum sentence of nine years and combined maximum sentence of 27 ½years violates the principle of proportionality espoused in *People v Milbourn*, 435 Mich 630; 461 NW2d 1 (1990). We affirm.

At resentencing, original appellate counsel made the following argument on behalf of defendant:

> Briefly, your Honor. This is an opportunity for re-sentencing. I would point out that the five-year felony firearm charge is mandatory, you can't adjust that. The other sentence before you is the four to 20 years on the assault and habitual offender. In that

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

> regard, I would point out that Mr. York-el was returned to prison as a parole violator at seven and one-half years on his previous offense, so right now the department of corrections has him serving 9 for the combination of your two minimums to 27 and one-half years.
>
> Mr. York-el and I have talked about this at great length and he's made an unusual request of me, but I think it's a sensible one. He believes that your minimum sentence in this case, the four years, was a reasonable sentence. He's aware of the case of People vs. Mauk, (Ph.), and I know your honor is aware that the maximum sentence on the habitual offender charge is not mandatory. Twenty years that you imposed is not mandatory maximum. You can adjust that maximum downwards, and that's what he's asked me to ask you to do, is to adjust his maximum sentence downwards recognizing that right now his combined maximums are 27 and one-half years.
>
> Mr. York-el has read the newspapers. He doesn't have a lot of faith in the parole board. He understands he's a parole violator. He doesn't think the parole board is going to look upon him favorably when he comes up for review. So what he would like to do is move his maximum sentence downwards in order to give him a reasonable discharge date.

The court refused defendant's request and reimposed the original sentences.

Given the violent nature of the current assault offense, the fact that defendant, as a four-time habitual offender, was subject to a term of life imprisonment for his assault conviction, MCL 769.12(1)(a); MSA 28.1084(1)(a), and the fact that he was on parole status at the time the current offenses were committed, we find no abuse of discretion by the sentencing court in imposing a twenty-year maximum sentence for defendant's assault conviction. The sentence is proportional to the offender and the seriousness of the offense. *Milbourn, supra.*

Affirmed.

/s/ E. Thomas Fitzgerald
/s/ Donald E. Holbrook, Jr.
/s/ Edward R. Post