

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

OLIVER LEE,

Defendant-Appellant.

UNPUBLISHED

March 7, 1997

No. 188611

Recorder's Court

LC No. 94-007611

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Before: White, P.J., and Cavanagh, and J.B. Bruff,\* JJ.

PER CURIAM.

Defendant appeals as of right his bench trial conviction of larceny from the person, MCL 750.357; MSA 28.589 and his enhanced, fourth-time habitual offender sentence, MCL 769.12; MSA 28.1085. We affirm.

Defendant argues that the prosecution presented insufficient evidence to convict him beyond a reasonable doubt of larceny from the person. MCL 750.357; MSA 28.589. We disagree.

To convict a defendant of larceny from the person, the prosecution must establish that the defendant actively or constructively took possession of the personal property of another and carried the property away against the owner's will, and that the defendant did the acts with felonious intent. See *People v Fischer*, 193 Mich App 284, 287; 483 NW2d 452 (1992); *People v Ainsworth*, 197 Mich App 321, 324; 495 NW2d 177 (1992). An appellate court reviewing the sufficiency of the evidence must view the evidence in a light most favorable to the prosecution to determine whether a rational trier of fact could have found that the essential elements of the crime charged were proven beyond a reasonable doubt. *People v Hunter*, 209 Mich App 280, 282; 530 NW2d 174 (1995).

Defendant argues that evidence was insufficient because the complainant's testimony was incredible. However, an appellate court is not permitted to assess the credibility of witnesses in determining whether the prosecution's evidence was sufficient to convict. *People v Herbert*, 444 Mich

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

466, 474; 511 NW2d 654 (1993). The trial court found complainant's testimony sufficiently credible to establish the offense of larceny from the person beyond a reasonable doubt. The complainant testified that defendant took his gold chain during a physical altercation, left the scene, and gave the gold chain to a woman. Based on this evidence, a rational trier of fact could have concluded that defendant took complainant's gold chain against complainant's will with the intent to permanently deprive him of his property.

Defendant also asserts that his habitual conviction and sentence must be reversed for failure to comply with MCR 6.302. We disagree. While the prosecutor concedes error on this issue, we conclude that it would be inappropriate to remand for further proceedings where defendant has failed to seek relief in the trial court, MCR 6.311(c), and the proceedings satisfied the requirements of the statute. MCL 769.13; MSA 28.1085. See *People v Zinn*, 217 Mich App 340, 349; \_\_\_ NW2d \_\_\_ (1996).

Defendant next argues that his habitual offender sentence is disproportionate. Again, we disagree.

A habitual offender sentence will not be reversed unless the trial court abused its discretion in imposing the sentence. *People v Cervantes*, 448 Mich 620, 626-627, 630; 532 NW2d 831 (1995); *Zinn, supra*; *People v Gatewood (on rem)*, 216 Mich App 559, 560; 550 NW2d 265 (1996). An habitual offender sentence is not an abuse of discretion if the sentence is proportionate to the seriousness of the crime and the defendant's prior record. See *People v Millbourn*, 435 Mich 630, 634-636; 461 NW2d 1 (1990); *People v McCrady*, 213 Mich App 474, 483; 540 NW2d 718 (1995); *People v Derbeck*, 202 Mich App 443, 446; 509 NW2d 534 (1993).

Defendant's sentence is proportionate to the seriousness of the crime and his prior record. Defendant has been convicted a total of thirteen times. Several prior offenses were similar in nature to the instant offense. Defendant has a history of parole violations, attempting to escape from prison, inciting a prison riot, and drug use. Defendant has refused to accept responsibility for the instant offense. Although defendant has previously taken advantage of prison work training and had a job at the time of the instant offense, these factors have apparently had little impact on defendant's criminal propensities. Under these circumstances, the trial court did not abuse its discretion when it sentenced defendant to five to fifteen years in prison.

Affirmed.

/s/ Helene N. White  
/s/ Mark J. Cavanagh  
/s/ John B. Bruff