

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

BILLY JAMES-EDWARD MARSEE,

Defendant-Appellant.

UNPUBLISHED

May 23, 2013

No. 307929

Wayne Circuit Court

LC No. 09-006888-FH

Before: DONOFRIO, P.J., and MARKEY and OWENS, JJ.

PER CURIAM.

Defendant appeals as of right his concurrent sentences of 8 to 15 years' imprisonment for each of his bench-trial convictions of second-degree home invasion, MCL 750.110a(3), larceny in a building, MCL 750.360, and assaulting, resisting, or obstructing a police officer causing injury requiring medical care, MCL 750.81d(2). Defendant was sentenced as a fourth-offense habitual offender, MCL 769.12. We affirm defendant's sentences.

Following his convictions in 2009, defendant appealed to this Court challenging his convictions and sentences. This Court affirmed defendant's convictions, but remanded for resentencing based on the improper scoring of OV 3 and OV 9. *People v Marsee*, unpublished opinion per curiam of the Court of Appeals, issued May 19, 2011 (Docket No. 295023). Defendant was originally sentenced as a fourth-offense habitual offender to concurrent terms of 10 to 20 years' imprisonment for the second-degree home invasion conviction, 8 to 15 years' imprisonment for the larceny in a building conviction, and 8 to 15 years' imprisonment for the assaulting, resisting, obstructing a police officer causing injury requiring medical case conviction. *Id.* On remand, the trial court resentenced defendant as fourth-offense habitual offender to concurrent terms of 8 to 15 years' imprisonment for each conviction.

In this appeal, defendant does not challenge the sentence imposed for his second-degree home invasion conviction. Rather, defendant argues that the trial court abused its discretion in sentencing defendant as a fourth-offense habitual offender for his larceny in a building conviction and assaulting, resisting, or obstructing a police officer causing injury requiring medical case conviction. In addition, defendant contends the maximum sentence of 15 years' imprisonment for each of the challenged convictions is grossly disproportionate to the seriousness of the circumstances and defendant. Defendant argues that his sentences should not

be enhanced and the statutory maximum sentence for each of those convictions should be four years' imprisonment. We disagree.

Generally, we review "a trial court's sentence imposed on an habitual offender for an abuse of discretion." *People v Reynolds*, 240 Mich App 250, 252; 611 NW2d 316 (2000). However, here, because defendant failed to preserve this issue for appellate review by objecting to the claims of error below, our review is limited to plain error affecting defendant's substantial rights. *People v Sexton*, 250 Mich App 211, 227-228; 646 NW2d 875 (2002).

Pursuant to MCL 769.12(1), upon a conviction of a felony, a defendant may be subject to an enhanced sentence if he previously "has been convicted of any combination of 3 or more felonies or attempts to commit felonies." Here, defendant previously had been convicted of four felonies, including first-degree home invasion, second-degree home invasion, larceny of a firearm, and third-degree retail fraud, which made him subject to an enhanced sentence as a fourth-offense habitual offender. The decision whether to impose an enhanced maximum sentence is within the trial court's discretion. *People v Bonilla-Machado*, 489 Mich 412, 429; 803 NW2d 217 (2011). "A trial court does not abuse its discretion in sentencing an habitual offender within the statutory limits established by the Legislature when the offender's underlying felony, in the context of previous felonies, evidences the defendant's inability to conform his conduct to the laws of society." *Reynolds*, 240 Mich App at 252.

Here, defendant's maximum sentences of 15 years' imprisonment for the challenged offenses are within the statutory limits and his crimes evidence his inability to conform his behavior to the law. The maximum sentence for both larceny in a building and assaulting, resisting, or obstructing a police officer causing injury requiring medical care is four years' imprisonment. MCL 750.360, MCL 750.503, MCL 750.81d(2). However, MCL 769.12(1)(c) allows the trial court to sentence a fourth-offense habitual offender "to imprisonment for a maximum term of not more than 15 years." Accordingly, defendant's maximum sentences of 15 years' imprisonment for the challenged offenses fall within this statutory limit.

In addition, the trial court based defendant's sentences on his previous criminal record and his underlying felony convictions, all of which involved theft. The trial court stated that defendant's "history is extensive here and it's very, very troubling." Further, one of defendant's underlying felony convictions was for assaulting, resisting, or obstructing a police officer causing injury requiring medical care. The repetitive nature and seriousness of defendant's crimes reveal that he is unable to conform his behavior to the law. Consequently, the trial court did not abuse its discretion in sentencing defendant.

Affirmed.

/s/ Pat M. Donofrio
/s/ Jane E. Markey
/s/ Donald S. Owens