

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

THOMAS M. MATTHEWS,

Defendant-Appellant.

UNPUBLISHED
November 6, 1998

No. 200598
Recorder's Court
LC No. 96-001938

Before: Markman, P.J., and Bandstra and J.F. Kowalski*, JJ.

MEMORANDUM.

Defendant appeals as of right his third offense habitual offender sentence, entered after a jury found him guilty of breaking and entering, MCL 750.110; MSA 28.305. We affirm.

The sentencing guidelines do not apply to habitual offenders, and it is inappropriate to use them when reviewing defendant's sentence. *People v Cervantes*, 448 Mich 620, 625-626 (Riley, J.), 630 (Cavanagh, J.); 532 NW2d 831 (1995); *People v McFall*, 224 Mich App 403, 415; 569 NW2d 828 (1997). Nonetheless, the principle of proportionality announced in *People v Milbourn*, 435 Mich 630; 461 NW2d 1 (1990), applies. *McFall*, *supra*. This Court will review an habitual offender sentence for an abuse of discretion. *People v Hansford (After Remand)*, 454 Mich 320, 323-324; 562 NW2d 460 (1997).

There is no showing that the trial court abused its discretion in sentencing defendant. The court noted defendant's extensive record, and his inability to reform. Given defendant's record, a five to twenty year sentence is not disproportionate, and the trial court did not abuse its discretion. *Id.*

We affirm.

/s/ Stephen J. Markman
/s/ Richard A. Bandstra
/s/ John F. Kowalski

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

