

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

BARI S. MYRICKS, a/k/a RONALD MCNEAL
BARI WALKER,

Defendant-Appellant.

UNPUBLISHED

April 19, 1996

No. 181181

LC Nos. 91-004302,
94-009192

Before: Cavanagh, P.J., and Marilyn Kelly and J.R. Johnson,* JJ.

MEMORANDUM.

Defendant, who was placed on lifetime probation after pleading guilty of possession with intent to deliver less than fifty grams of cocaine, MCL 333.7401(2)(a)(iv); MSA 14.15(7401)(2)(a)(iv), pleaded guilty of violating his probation by committing subsequent crimes. Defendant was sentenced to five to twenty years' imprisonment on the underlying possession offense. Defendant appeals the sentence as of right. We affirm.

Defendant argues that his sentence is not proportional to the seriousness of the offense. Defendant notes that his sentence exceeds the guidelines. However, the guidelines do not apply to probation violations. Nevertheless, the guidelines scoring for the underlying offense should be used as a starting point in determining whether a defendant's sentence is appropriate. *People v Cotton*, 209 Mich App 82, 84; 530 NW2d 495 (1995).

This Court reviews a sentencing court's decision under an abuse of discretion standard. *People v McCrady*, 213 Mich App 474, 483; 540 NW2d 718 (1995). After carefully reviewing the record, we conclude that the trial court did not abuse its discretion in exceeding the guidelines. The trial court based its sentence on defendant's inability to comply with the law even after having been sent to boot camp and put on probation. Defendant's sentence is proportionate to the seriousness of the

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

circumstances surrounding the offense and the offender. *People v Milbourn*, 435 Mich 630, 636; 461 NW2d 1 (1990).

Affirmed.

/s/ Mark J. Cavanagh

/s/ Marilyn Kelly

/s/ J. Richardson Johnson