

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

VINCENT MICHAEL HOLDEN,

Defendant-Appellant.

UNPUBLISHED

April 30, 1996

No. 183603

LC Nos. 94-005315

& 94-005316

Before: Murphy, P.J., and Reilly and C.W. Simon, Jr.,* JJ.

MEMORANDUM.

Defendant pleaded guilty to manufacturing marijuana, MCL 333.7401(2)(c); MSA 14.15(7401)(2)(c), first-degree retail fraud, MCL 750.356c; MSA 28.588(3), and to being a second habitual offender, MCL 769.10; MSA 28.1082. The trial court sentenced him as an habitual offender to imprisonment for thirty-six to seventy-two months for manufacturing marijuana and twelve to twenty-four months for first-degree retail fraud. Defendant appeals as of right, and we affirm.

Defendant argues that his thirty-six- to seventy-two-month sentence for manufacturing marijuana is disproportionate. We disagree. The sentencing guidelines do not apply to habitual offenders. *People v Cervantes*, 448 Mich 620; 532 NW2d 831 (1995). However, the guidelines are a useful tool in determining whether an habitual offender's sentence is proportionate. *People v Gatewood*, 214 Mich App 211, 213; 542 NW2d 605 (1995). In this case, the guidelines provide for a minimum sentence of 0 to 12 months. Although defendant's minimum sentence exceeds the guidelines range, we conclude that the sentence is proportionate in light of 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; 461 NW2d 1 (1990).

Affirmed.

/s/ William B. Murphy
/s/ Maureen Pulte Reilly
/s/ Charles W. Simon, Jr.