

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

SCOTT EDWARD TRUITT,

Defendant-Appellant.

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UNPUBLISHED

May 3, 1996

No. 188588

LC No. 94-069536-FH

Before: Taylor, P.J., and Fitzgerald and P. D. Houk,\* JJ.

MEMORANDUM.

Defendant pleaded guilty to delivery of marijuana, MCL 333.7401(2)(c); MSA 14.15(7401)(2)(c), and habitual offender, second offense, MCL 769.10; MSA 28.1032. Defendant received an enhanced sentence of three to six years' imprisonment to be served consecutive to a sentence for which he was on parole. Defendant appeals as of right. We affirm.

Defendant notes that the sentencing guidelines for his underlying conviction were six to thirty months, and argues his thirty-six month minimum sentence is disproportionate. At the outset, we note that the sentencing guidelines are not directly applicable where defendant was sentenced as an habitual offender. *People v Cervantes*, 448 Mich 620, 625; 632 NW2d 831 (1995). The key test of proportionality is whether the sentence reflects the seriousness of the matter. *People v Houston*, 448 Mich 312, 320; 532 NW2d 508 (1995). The court initially placed defendant on a delayed sentence so he could participate in a residential drug treatment program. Defendant failed to return to the program after an approved leave and was eventually arrested after he failed to appear for sentencing. The presentence investigation report indicates defendant was selling marijuana to support a cocaine habit. The instant conviction was defendant's fourth felony conviction and he committed the offense while on parole. Under these circumstances, we are satisfied that the trial court did not abuse its discretion in sentencing defendant. *Cervantes, supra*.

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

Defendant also argues that the trial court failed to grant him credit for time served when it imposed sentence. We disagree.

The updated presentence report indicated that, because defendant committed the instant offense while on parole, he should not receive any jail credit. At sentencing, the court asked defense counsel if there was anything in the updated presentence report that was incorrect. Defense counsel did not challenge the statement that defendant was not entitled to credit for any time served. This issue is not preserved for appeal. *People v Rodriguez*, 192 Mich App 1, 5; 480 NW2d 287 (1991). We further note that, because defendant's sentence cannot begin until the expiration of his prior sentence, no credit can be given toward the instant conviction. MCL 768.7a(2); MSA 28.1030(1); *People v Watts*, 186 Mich App 686, 687; 464 NW2d 715 (1991); *People v Gasek*, 122 Mich App 523, 525; 332 NW2d 520 (1983). We also reject defendant's claim that we should remand so that defendant may have jail time credited toward the consecutive sentence he is now serving. We lack jurisdiction to enter an order affecting defendant's parole case. *Watts, supra* at 687 n 1.

Affirmed.

/s/ Clifford W. Taylor  
/s/ E. Thomas Fitzgerald  
/s/ Peter D. Houk