

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

LARRY HIRNES, JR.,

Defendant-Appellant.

UNPUBLISHED

May 7, 1996

No. 180496

LC No. 94050385 FH

Before: Marilyn Kelly, P.J., and Gribbs and W.E. Collette,* JJ.

PER CURIAM.

Defendant pleaded guilty to possession of less than 25 grams of cocaine. MCL 333.7403(2)(a)(v); MSA 14.15(7403)(2)(a)(v). In exchange for the plea, the prosecution dismissed the charge it had brought for habitual offender. The trial judge sentenced defendant to four to eight years' imprisonment. MCL 333.7413(2); MSA 14.15(7413)(2).

Defendant argues on appeal that his sentence is disproportionate. In reviewing the record, we find that the judge made an error during the plea hearing, necessitating a reversal and remand.

A trial judge may not accept a guilty plea unless convinced that the plea is understanding, voluntary and accurate. MCL 6.302(A). Before accepting a plea, the judge must advise the defendant and determine if he understands the maximum possible prison sentence for the offense. MCR 6.302(B)(2); *People v Jones*, 105 Mich App 269, 271; 306 NW2d 475 (1981). Here, the judge informed defendant that the maximum possible sentence was four years. However, he did not take into account that this was defendant's second drug offense. Therefore, it was within his discretion to sentence defendant to eight years' imprisonment. MCL 333.7413(2); MSA 14.15(7413)(2).

At the sentencing hearing, realizing that enhancement was within his discretion, the judge sentenced defendant to a maximum of eight years' imprisonment. Had defendant known at the time of the plea that the maximum sentence was that long, he might not have pleaded guilty. This

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

is especially true where the plea was conditioned on the prosecutor dismissing an habitual offender count. Consequently, reversal is required.

Because of the disposition of this matter, we decline to address defendant's argument that his sentence was disproportionate. However, we note his argument that the judge failed to consider that his sentence would run consecutive to a previous sentence for a probation violation. We find nothing in the record to support defendant's argument, as it appears that the sentences are to run concurrently. In any event, the proportionality of a sentence is to be assessed without regard to the effect of a consecutive sentence. *People v Hardy*, 212 Mich App 318, 320; 537 NW2d 267 (1995).

Reversed and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Marilyn Kelly

/s/ Roman S. Gibbs

/s/ William E. Collette