

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

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JEFFREY SCOTT RILEY,

Defendant-Appellant.

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UNPUBLISHED

May 24, 1996

No. 183593

LC No. 93-125680-FH

Before: Kavanagh, T.G.,\* P.J., and R.B. Burns\*\* and G.S. Allen,\*\* JJ.

MEMORANDUM.

Defendant pleaded nolo contendere to manufacturing marijuana, MCL 333.7401(2)(c); MSA 14.15(7401)(2)(c), and habitual offender, second offense, MCL 769.10; MSA 28.1082. He was sentenced to thirty-eight to seventy-two months' imprisonment, and now appeals as of right. We affirm. This case has been decided without oral argument pursuant to MCR 7.214(A).

The trial court abused its discretion in scoring ten points for Offense Variable 8 of the sentencing guidelines. *People v Daniels*, 192 Mich App 658, 674; 482 NW2d 176 (1992). Although there was evidence that defendant was operating a large marijuana growing business, there was no evidence to support the trial court's finding that any income derived from this business constituted a substantial portion of defendant's income since the evidence indicated that defendant may have had legitimate sources of income during this same time period. *People v Hernandez*, 443 Mich 1, 16; 503 NW2d 629 (1993); *People v Emma Johnson*, 144 Mich App 497, 502-503; 376 NW2d 122 (1985). Despite the trial court's scoring error, defendant is not entitled to resentencing or reconsideration of his sentence. Even if the scoring for OV 8 was reduced to zero points, this would not change the

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\*Former Supreme Court Justice, sitting on the Court of Appeals by assignment pursuant to Administrative Order 1995-1.

\*\*Former Court of Appeals Judges, sitting on the Court of Appeals by assignment pursuant to Administrative Order 1995-1.

sentencing guidelines' range. We therefore decline to remand this matter back to the trial court for further proceedings. *People v Dale Williams*, 191 Mich App 269, 279-280; 477 NW2d 877 (1991).

Defendant's sentence does not violate the principle of proportionality. *People v Milbourn*, 435 Mich 630, 636; 461 NW2d 1 (1990). Defendant's sentence is not disproportionate simply because it exceeds the guidelines' range since the guidelines did not apply to defendant as an habitual offender. *People v Cervantes*, 448 Mich 620, 625, 630; 532 NW2d 831 (1995). The trial court gave appropriate reasons to justify the enhancement of defendant's sentence as an habitual offender. *Id.*, 627-628, 634, 636-637.

Affirmed.

/s/ Thomas G. Kavanagh

/s/ Robert B. Burns

/s/ Glenn S. Allen, Jr.