STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

GEORGE F. HEMINGWAY,

Defendant-Appellant.

UNPUBLISHED
June 25, 1996

No. 173661
LC No. 92-6102-FH

Before: O'Connell, P.J., and Sawyer and G.R. Corsiglia,* JJ.

PER CURIAM.

Defendant pleaded guilty to delivery of marijuana, MCL 333.7401(2)(c); MSA 14.15(7401)(2)(c), and was sentenced to 2-1/2 to 4 years' imprisonment. He appeals as of right. We affirm.

The trial court erred, in part, in finding that defendant had no standing to claim entrapment. Although defendant cannot take advantage of the codefendant's claim that the informant pressured him to acquire marijuana because defendant had no knowledge of this alleged conduct, defendant had standing to claim entrapment based on other aspects of the undercover activity. *People v Harding*, 163 Mich App 298, 315-317; 413 NW2d 777 (1988), vacated in part on other grounds 430 Mich 856 and 859 (1988); *People v Matthews*, 143 Mich App 45, 54-55; 371 NW2d 887 (1985). Despite having standing, defendant's claim of being entrapped is not supported by the record. *People v James Williams*, 196 Mich App 656; 493 NW2d 507 (1992); *People v Fabiano*, 192 Mich App 523; 482 NW2d 467 (1992). See also *People v Martin*, 199 Mich App 124, 125; 501 NW2d 198 (1993); *People v Patrick*, 178 Mich App 152, 154; 443 NW2d 499 (1989).

Next, defendant argues that he should be resentenced because his sentence violates the principle of proportionality and was based on an improper consideration. *In re Dana Jenkins*, 438 Mich 364, 369 n 3; 475 NW2d 279 (1991). See also *People v Merriweather*, 447 Mich 799; 527

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

NW2d 460 (1994); *People v Milbourn*, 435 Mich 630; 461 NW2d 1 (1990); *People v Rosales*, 202 Mich App 47; 507 NW2d 776 (1993). We find these issues to be moot because defendant has already served his minimum sentence. *People v Rutherford*, 208 Mich App 198, 204; 526 NW2d 620 (1994).

Affirmed.

/s/ Peter D. O'Connell
/s/ David H. Sawyer
/s/ George R. Corsiglia