

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

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DRAMOND DONZELL HICKS,

Defendant-Appellant.

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UNPUBLISHED

September 24, 1996

No. 182272

LC Nos. 94-009268-FH;

94-009607-FH

Before: J.H. Gillis, P.J., and G.S. Allen and J.B. Sullivan, JJ.\*

MEMORANDUM.

Defendant pleaded guilty in two separate cases to delivery of less than fifty grams of cocaine, MCL 333.7401(2)(a)(iv); MSA 14.15(7401)(2)(a)(iv), felonious assault, MCL 750.82; MSA 28.277, and intentional discharge of a firearm from a motor vehicle, MCL 750.234a; MSA 28.431(1). For those respective convictions, he was sentenced to five to ten years' imprisonment, two to four years' imprisonment, and two to four years' imprisonment. He appeals as of right. We affirm. This case has been decided without oral argument pursuant to MCR 7.214(A).

Defendant's convictions of both felonious assault and intentionally discharging a firearm do not violate the Double Jeopardy Clauses of the United States and Michigan Constitutions. US Const, Am V; Const 1963, art 1, § 15. Because the offenses in question address different social norms and contain mutually exclusive elements, we conclude that the Legislature intended separate punishments. See *People v Sturgis*, 427 Mich 392, 398-400; 397 NW2d 783 (1986); *People v Cortez*, 206 Mich App 204, 206; 520 NW2d 693 (1994).

Next, because the imposition of sentence was immediately preceded by the prosecutor's argument that defendant should be sentenced within the respective guidelines' ranges, it is clear that the trial court was sentencing defendant in accord with the guidelines even though this was not explicitly

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\*Former Court of Appeals judges, sitting on the Court of Appeals by assignment pursuant to Administrative Order 1996-3.

indicated. Under these circumstances, a remand for articulation is unnecessary. *People v Lawson*, 195 Mich App 76, 78; 489 NW2d 147 (1992).

Further, defendant was not denied his right to the effective assistance of counsel by defense counsel's failure to address the court on defendant's behalf at sentencing. The decision to address the court at sentencing is a tactical one, which this Court is reluctant to second guess. *People v Arney*, 138 Mich App 764, 766; 360 NW2d 291 (1984). Additionally, defendant does not indicate how he was prejudiced by defense counsel's failure to address the court at sentencing and we can discern no prejudice from the record. Hence, defendant's ineffective assistance of counsel claim must fail.

Lastly, defendant has failed to overcome the presumption that his sentences for delivery of less than fifty grams of cocaine and felonious assault, which were within the sentencing guidelines' recommended ranges, as well as his sentence for intentionally discharging a firearm, are proportionate. *People v Milbourn*, 435 Mich 630; 461 NW2d 1 (1990); *People v Broden*, 428 Mich 343, 354-355; 408 NW2d 789 (1987). Our review of the record reveals that defendant's sentences are in fact proportionate to the seriousness of the circumstances surrounding the offenses and the offender. *Milbourn, supra*.

Affirmed.

/s/ John H. Gillis

/s/ Glenn S. Allen, Jr.

/s/ Joseph B. Sullivan