

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

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

WILBUR STEWART GOUDEAU,

Defendant-Appellant.

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UNPUBLISHED

September 27, 1996

No. 185075

LC No. 94-070612-FH

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

MEMORANDUM.

Defendant pleaded guilty to delivery of less than fifty grams of cocaine, MCL 333.7401(2)(a)(iv); MSA 14.15(7401)(2)(a)(iv), and habitual offender, second offense, MCL 769.10; MSA 28.1082. He was sentenced to five to thirty years' imprisonment, and now appeals as of right. We affirm. This case has been decided without oral argument pursuant to MCR 7.214(E)(1)(b).

Defendant first claims that the sentencing court failed to exercise its discretion in imposing the thirty-year maximum sentence. We disagree. Here, unlike the situations in *People v Mauch*, 23 Mich App 723; 179 NW2d 184 (1970), and *People v Green*, 205 Mich App 342; 517 NW2d 782 (1994), the sentencing court adequately recognized its discretion and never stated that the maximum sentence was mandatory. Cf., *People v Bewersdorf*, 438 Mich 55, 66; 574 NW2d 231 (1991); *People v Turski*, 436 Mich 878; 461 NW2d 366 (1990); *Green, supra*.

Defendant further claims that he is entitled to resentencing because the sentencing information report was incorrectly scored. Any error by the trial court in assessing fifteen points under Offense Variable 16 is harmless. The sentencing guidelines do not apply to habitual offender sentencings. *People v Gatewood*, 450 Mich 1021; 546 NW2d 252 (1996); *People v Reynolds*, 195 Mich App 182, 184; 478 NW2d 128 (1992). Even if the guidelines did apply, defendant's sentence is within the recalculated guidelines' range and is therefore presumptively proportionate. *People v Broden*, 428 Mich 343, 354-355; 408 NW2d 789 (1987). Defendant is not entitled to resentencing.

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

Affirmed.

/s/ John H. Gillis

/s/ Glenn S. Allen, Jr.

/s/ Joseph B. Sullivan