

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ROBERT JOHN TAYLOR,

Defendant-Appellant.

UNPUBLISHED

October 1, 1996

No. 187555

LC No. 94-006669-FH

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

MEMORANDUM.

Defendant pleaded guilty to delivery of 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 2-1/2 to 6 years' imprisonment, and now appeals as of right. We affirm. This case has been decided without oral argument pursuant to MCR 7.214(A).

The sentencing guidelines should not be considered in determining whether the trial court abused its discretion in sentencing defendant as an habitual offender. *People v Gatewood*, 450 Mich 1021; 546 NW2d 252 (1996). The key test is whether the sentence is proportionate to the seriousness of the circumstances surrounding the offense and the offender. *People v Gatewood (On Remand)*, 216 Mich App 559; 550 NW2d 265 (1996). A sentencing court abuses its discretion when it violates the principle of proportionality. *People v Milbourn*, 435 Mich 630, 661; 461 NW2d 1 (1990); *People v McCrady*, 213 Mich App 474, 483; 540 NW2d 831 (1995).

The sentencing court did not abuse its discretion in sentencing defendant to 2-1/2 to 6 years' imprisonment. Under MCL 333.7401(2)(c); MSA 14.15(7401)(2)(c) delivery of marijuana is a felony punishable by a maximum of four years in prison. Defendant also pleaded guilty to habitual offender,

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

second offense, MCL 769.10; MSA 28.1082, based on a prior unarmed robbery conviction. In imposing defendant's sentence, the court considered his criminal history, his potential for rehabilitation, and the fact that the instant crime was committed while he was on probation. See *People v Cervantes*, 448 Mich 620, 627; 532 NW2d 831 (1995). The court also indicated a desire to discipline defendant and protect the public. The applicable habitual offender statute, MCL 769.10; MSA 28.1082, allowed an enhancement of one and one half times the maximum sentence on the primary offense, for a maximum penalty of six years in prison. We hold that defendant's habitual offender sentence is a proportionate enhancement of his sentence for the conviction of delivery of marijuana.

Affirmed.

/s/ John H. Gillis

/s/ Glenn S. Allen, Jr.

/s/ Joseph B. Sullivan