

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

PERCY JEROME MOORE,

Defendant-Appellant.

UNPUBLISHED

October 1, 1996

No. 191203

LC No. 94-006501-FH

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

MEMORANDUM.

Pursuant to a plea agreement, defendant pleaded guilty of delivery of less than fifty grams of cocaine, MCL 333.7401(2)(a)(iv); MSA 14.15(7401)(2)(a)(iv), and was sentenced to ten to twenty years' imprisonment. He appeals as of right. We affirm. This case has been decided without oral argument pursuant to MCR 7.214(E)(1)(b).

First, defendant failed to request an evidentiary hearing to determine the truth or falsity of certain information contained in the presentence report. Hence, he failed to make an effective challenge to the accuracy of that information. *People v Lawrence*, 206 Mich App 378, 379-380; 522 NW2d 654 (1994). We ascribe the failure to request an evidentiary hearing to defense strategy. *Id.* In any event, it is not improper for the presentence report to include information regarding prior illegal activities even though such activities did not result in defendant being charged or convicted. *People v Books*, 95 Mich App 500, 503-506; 291 NW2d 94 (1980); *People v Gunter*, 76 Mich App 483, 494; 257 NW2d 133 (1977).

Next, there was adequate evidence on the record to support the sentencing court's assessment of ten points for each of Offense Variables 8 and 9 and twenty-five points for Offense Variable 16. *People v Reddish*, 181 Mich App 625, 628; 450 NW2d 16 (1989). The preliminary examination

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

testimony of Shawn Hubbs and the admissions made by defendant during the plea-taking hearing support the trial court's scoring of the challenged offense variables.

Lastly, defendant's sentence is within the recommended range of the sentencing guidelines and does not violate the principle of proportionality. *People v Milbourn*, 435 Mich 630, 651; 461 NW2d 1 (1990); *People v Broden*, 428 Mich 343, 354-355; 408 NW2d 789 (1987); *People v Williams (After Remand)*, 198 Mich App 537, 543; 499 NW2d 404 (1993).

Affirmed.

/s/ John H. Gillis

/s/ Glenn S. Allen, Jr.

/s/ Joseph B. Sullivan