

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

MARSHALL DAVIS,

Defendant-Appellant.

UNPUBLISHED

December 6, 1996

No. 167875

LC No. 93-036023-FH

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

MEMORANDUM.

Defendant pleaded guilty to two counts 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 consecutive terms of three to twenty years' imprisonment. He appeals as of right. We remand. This case has been decided without oral argument pursuant to MCR 7.214(A).

A trial court's failure to advise a defendant of the right to a jury trial and failure to secure a constitutionally valid waiver of this right generally requires setting aside the defendant's plea. MCR 6.302(B)(3)(a); *People v Russell*, 73 Mich App 628, 629; 252 NW2d 533 (1977). Although the record in the instant case indicates that the trial court failed to so advise defendant and failed to secure such a waiver, the court denied defendant's request to withdraw his pleas, surmising that the court reporter had accidentally omitted from the transcript the court's reference to defendant's jury trial right and defendant's waiver thereof. On the record before us, we are unable to ascertain the accuracy of the court's conclusion. A certified transcript is presumed accurate absent an independent corroboration of the inaccuracy. *People v Abdella*, 200 Mich App 473, 475-476; 505 NW2d 18 (1993). Hence, we remand the instant action to the trial court for a hearing at which the parties will be allowed to confirm or refute the court's belief that a transcription error occurred. If an independent showing of error is made, or if the court possesses notes or memory reflecting that it advised defendant of his jury trial right, the court may correct the record, MCR 7.216(A)(4); *People v Worden*, 71 Mich App 507,

*Former Court of Appeals judges, sitting on the Court of Appeals by assignment pursuant to Administrative Order 1996-10.

511; 248 NW2d 597 (1976), and enter an order affirming defendant's convictions and sentences. If, however, a transcription error cannot be confirmed, then the court must advise defendant of the right, make the inquiries necessary to rectify the error and then give defendant the opportunity to allow his convictions and sentences to stand or to withdraw his pleas. MCR 6.311(B).

Defendant's remaining claims lack merit. The court's failure to advise defendant of the consecutive sentencing consequences of his pleas does not entitle defendant to an opportunity to withdraw his pleas. MCR 6.302(B)(2); *People v Waterman*, 140 Mich App 652, 656; 364 NW2d 780 (1985); *People v Shabazz*, 121 Mich App 320, 322-323; 328 NW2d 379 (1982); *People v Brown*, 117 Mich App 382, 384-385; 323 NW2d 721 (1982); *People v Boswell*, 95 Mich App 405, 410; 291 NW2d 57 (1980). The trial court did not erroneously score Prior Record Variable 7 of the sentencing guidelines. *People v Hernandez*, 443 Mich 1, 16; 503 NW2d 629 (1993); *People v Daniels*, 192 Mich App 658, 674; 482 NW2d 176 (1992). Defendant's sentences do not violate the principle of proportionality. *People v Milbourn*, 435 Mich 630; 461 NW2d 1 (1990). Finally, while some federal courts have intimated that there may exist a sentencing "entrapment" or "manipulation" claim that arises when the government ratchets up a defendant's drug sales or other conduct merely to increase the defendant's sentence, *United States v Shephard*, 4 F3d 647, 649 (CA 8, 1993); *United States v Calva*, 979 F2d 119, 122-123 (CA 8, 1992), we need not address whether Michigan should recognize such a claim because defendant has presented no evidence from which it can be inferred that the police were attempting to ratchet up his sentence consequences.

Remanded for proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ John H. Gillis

/s/ Glenn S. Allen, Jr.

/s/ Joseph B. Sullivan