

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

MARVIN E. BRIDGES,

Defendant-Appellee.

UNPUBLISHED

December 6, 1996

No. 184840

LC No. 94-136526-FH

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

MEMORANDUM.

Defendant pleaded guilty to possessing less than twenty-five grams of a mixture containing a controlled substance, MCL 333.7403(2)(a)(v); MSA 14.15(7403)(2)(a)(v), and to being a repeat drug offender, MCL 333.7413(2); MSA 14.15(7413)(2). He was sentenced to two years' probation. Plaintiff appeals as of right, challenging the probationary sentence. We remand for resentencing. This case has been decided without oral argument pursuant to MCR 7.214(E)(1)(b).

We agree with the prosecution that defendant's two-year probationary sentence is disproportionately lenient to the seriousness of the circumstances surrounding the offense and the offender. *People v Milbourn*, 435 Mich 630; 635-636; 461 NW2d 1(1990). This is particularly so in light of defendant's criminal history and his failure to rehabilitate despite being given numerous opportunities to do so. Accordingly, defendant's sentence is vacated and the case is remanded for resentencing. Since defendant's plea was tendered pursuant to *People v Cobbs*, 443 Mich 276; 505 NW2d 208 (1993), defendant may withdraw his plea if he sentenced to other than a delayed sentence or a probationary term. *Id.*, 283.

On remand, although the trial court should not consider the sentencing guidelines in determining an appropriate sentence for defendant, *People v Gatewood*, 450 Mich 1025; ___ NW2d ___ (1996); the court should nevertheless complete a sentencing information report as required by the Michigan

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

Sentencing Guidelines. See Michigan Sentencing Guidelines Manual (2d ed), pp 1, 6; *People v Williams*, 205 Mich App 229, 233; 517 NW2d 315 (1994).

Remanded for resentencing. We do not retain jurisdiction.

/s/ John H. Gillis

/s/ Glenn S. Allen, Jr.

/s/ Joseph B. Sullivan