

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

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

KEITH LARRAINE HARBIN,

Defendant-Appellant.

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UNPUBLISHED

December 13, 1996

No. 184344

Ottawa County

LC No. 94-017999-FH

Before: Sawyer, P.J., and Markman and H.A. Koselka,\* JJ.

PER CURIAM.

Defendant was convicted, following a jury trial, of possession with intent to deliver less than fifty grams of cocaine. MCL 333.7401(2)(a)(iv); MSA 14.15(7401)(2)(a)(iv). He thereafter pled guilty to being a habitual offender (third offense). MCL 769.11; MSA 28.1083. He was sentenced to serve sixteen to forty years in prison. He now appeals and we affirm.

Defendant's only argument on appeal is that his sentence violates the principle of proportionality. See *People v Milbourn*, 435 Mich 630; 461 NW2d 1 (1990). It does not. First, defendant suggests that his sentence was influenced by the fact that, at the time of sentencing, he was awaiting trial for jail escape and the murder of a police officer during that escape attempt.<sup>1</sup> However, the trial judge specifically stated that he was not considering the pending charges in sentencing defendant because defendant still enjoyed the presumption of innocence in that case.

As for the more general question of whether the sentence imposed was proportionate, we are satisfied that it was. Defendant was only twenty-one years old at the time of the instant offense, yet it is already his third felony conviction. Additionally he has three juvenile adjudications. Furthermore, defendant was on parole for unarmed robbery at the time of the instant offense. In short, defendant has

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\* Circuit judge, sitting on the Court of Appeals by assignment.

demonstrated an inability to conform to the requirements of society or to take advantages of opportunities to be rehabilitated. Accordingly, we are satisfied that the sentence imposed was proportionate.

Affirmed.

/s/ David H. Sawyer

/s/ Stephen J. Markman

/s/ Harvey A. Koselka

<sup>1</sup> Defendant's escape occurred while he was awaiting sentencing for the instant case.