

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

LEON HOWARD WALKER,

Defendant-Appellant.

UNPUBLISHED

January 7, 1997

No. 168064

Ottawa Circuit Court

LC No. 93-17077-FH

and 93-17078-FH

Before: McDonald, P.J., and Murphy and M. F. Sapala*, JJ.

PER CURIAM.

Defendant appeals his bench trial conviction and sentence of delivery of less than fifty grams of cocaine in lower case number 17077 and his jury trial conviction of the same charge in lower case number 17078, MCL 333.7401(2)(a)(iv); MSA 14.15(7401)(2)(a)(iv). He was sentenced to 2 to 20 and 2 ½ to 20 years' imprisonment respectively with the terms running consecutively. On appeal defendant claims the court failed to strike an inaccurate statement in his presentence report and further claims his sentences are not proportionate punishment.

After a careful review, we conclude the court's did not abuse its discretion because defendant's sentences are proportionate to the offender's history and circumstances surrounding the offenses. *People v Milbourn*, 435 Mich 630; 461 NW2d 1 (1990). The sentences are well within the guidelines even if considered consecutively and are in accordance with defendant's request at sentencing. Defendant was on parole for armed robbery when these offenses were committed.

Defendant's claim the sentences were constitutionally cruel or unusual are without merit since we have concluded they are proportionate.

* Recorder's Court judge, sitting on the Court of Appeals by assignment.

Both parties concede the judge failed to excise defendant's statement, "He further states that Patricia is pregnant with his child" found on page four of the presentence report under the paragraph entitled "Daughter."

The convictions and sentences are affirmed and this cause is remanded to the trial court solely for the purpose of striking the above said statement from the defendant's presentence report. We do not retain jurisdiction.

/s/ Gary R. McDonald

/s/ William B. Murphy

/s/ Michael F. Sapala