

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ALFONSO GOINES,

Defendant-Appellant.

UNPUBLISHED

January 24, 1997

No. 183233

Oakland Circuit Court

LC No. 93-126388

Before: Doctoroff, P.J., and Hood and Paul J. Sullivan,* JJ.

PER CURIAM.

Defendant challenges the sentences imposed for his violation of probation, arguing that the sentences should not have been imposed consecutively to the sentence for the subsequent offense. Defendant also contends that the cumulative length of his consecutive sentences violates the principle of proportionality. We affirm.

In July 1993, defendant pleaded guilty to charges of delivery of less than 50 grams of cocaine, MCL 333.7401(2)(a)(iv); MSA 14.15(7401)(2)(a)(iv) and conspiracy to deliver less than 50 grams of cocaine. Defendant also admitted that the charges against him were his second controlled substance offense, MCL 333.7413(2); MSA 14.15(7413)(2). On September 29, 1993, defendant was sentenced to lifetime probation.

Subsequently, defendant was arrested on an unrelated matter involving his attempt to injure another while operating an automobile. On August 29, 1994, defendant pleaded guilty to charges of assault with intent to commit murder and unlawful use of a motor vehicle. He was sentenced to 3 to 20 years' imprisonment as an habitual offender. As a result of the assault conviction, a hearing was held regarding defendant's violation of probation. Defendant pleaded guilty to violating his probation regarding both the delivery conviction and the conspiracy conviction. Defendant was sentenced to 1½ to 40 years' imprisonment for each violation of probation, and the sentences were to be served consecutively. In addition, the sentences were imposed consecutively to the sentence for the assault conviction.

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

Pursuant to MCL 333.7401(3); MSA 14.15(7401)(3), a term of imprisonment for delivery of a controlled substance “*shall* be imposed to run consecutively with any term of imprisonment imposed for the commission of another felony” (emphasis added). Therefore, the trial court was obligated to impose defendant’s sentence for violation of probation on the drug delivery conviction consecutive to the sentence for the assault conviction. *People v Hardy*, 212 Mich App 318, 322-324; 537 NW2d 267 (1995). Similarly, MCL 333.7401(3); MSA 14.15(7401)(3) mandates that defendant’s sentence for conspiracy to deliver drugs (“another felony”) be served consecutively to the sentences for the delivery of narcotics and assault convictions. See *People v Cline*, 190 Mich App 1, 2; 475 NW2d 362 (1991). Accordingly, we find no merit in defendant’s argument that the trial court erred in imposing consecutive sentences rather than concurrent sentences.

Defendant also argues that the total length of his cumulative sentences violates the principal of proportionality under *People v Milbourn*, 435 Mich 630; 461 NW2d 1 (1990), because the aggregate of the sentences exceeds the sentencing guidelines. We disagree. This Court has determined that each sentence is to be viewed individually to determine proportionality. *People v Warner*, 190 Mich App 734, 736; 476 NW2d 660 (1991). The consecutive nature of the sentences has no effect on our application of the *Milbourn* standard. *Id.* Defendant concedes that each individual sentence is within the guidelines range and would not violate proportionality. Accordingly, defendant’s argument on this issue is without merit. The fact that defendant’s sentences are to be served consecutively does not render them violative of the principal of proportionality. *Id.*

Affirmed.

/s/ Martin M. Doctoroff

/s/ Harold Hood

/s/ Paul J. Sullivan