

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JOHN STEWART,

Defendant-Appellant.

UNPUBLISHED

January 24, 1997

No. 184293

Oakland Circuit Court

LC Nos. 94-131695-FH

94-131696-FH

94-131697-FH

94-131698-FH

94-131699-FH

94-131700-FH

94-131701-FH

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

PER CURIAM.

Defendant entered pleas of guilty to two counts of possession with intent to deliver 50 grams, but less than 225 grams, of cocaine, MCL 333.7401(2)(a)(iii); MSA 14.15(7401) (2)(a)(iii), and five counts of possession with intent to deliver less than 50 grams of cocaine, MCL 333.7401(2)(a)(iv); MSA 14.15(7401)(2)(a)(iv). The pleas were made pursuant to a *Cobbs*¹ agreement that defendant receive a sentence of no more than fifteen to forty years “with the stack of lifetime probation.” Defendant was sentenced to consecutive prison terms of ten to twenty years and five to fifteen years for his convictions for possession with intent to deliver between 50 and 224 grams of cocaine. He was sentenced to lifetime probation for each of his convictions for possession with intent to deliver less than 50 grams of cocaine. Defendant appeals as of right. We affirm.

Defendant argues that his consecutive sentences of ten to twenty years and five to fifteen years for his convictions for possession with intent to deliver between 50 and 224 grams of cocaine were

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

excessive. We disagree. Defendant's sentences are within the guidelines recommended range of five to thirty years' imprisonment for each offense and are thus presumptively proportionate. *People v Hardy*, 212 Mich App 318, 321; 537 NW2d 267 (1995); *People v Eberhardt*, 205 Mich App 587, 591; 518 NW2d 511 (1994). A defendant may present sufficient mitigating factors to overcome the presumption. *Id.*

Defendant urges us to find his sentences disproportionate because a government agent controlled his criminal exposure, thereby entrapping him, and he was not a "hard core drug dealer." He also claims that he has family support, and was seeking a culinary arts degree and working. We find these arguments devoid of merit. In this case, defendant entered pleas of guilty to seven counts of possession with intent to deliver cocaine. Having reviewed the record, we are not convinced that, under these circumstances, the actions of the government agent mitigated defendant's culpability for the crimes.² Furthermore, defendant has a relatively short and unstable work history, as well as a criminal history (a prior felony conviction and a prior misdemeanor conviction). In fact, at the time these offenses were committed, defendant was on probation for a non-drug related felony conviction.

Moreover, we reject defendant's proportionality argument because he received exactly the sentences to which he previously had agreed and, because he has made no effort to withdraw his pleas, may not now challenge those sentences. *People v Cobbs*, 443 Mich 276, 285; 505 NW2d 208 (1993); *People v Blount*, 197 Mich 174, 175; 494 NW2d 829 (1992).³ Furthermore, defendant has not claimed ineffective assistance of counsel, nor is there any indication that the pleas were tainted or that the prosecutor or the court violated the terms of the sentencing agreement. Accordingly, defendant has waived his right to challenge the proportionality of his sentence where he entered into a sentence agreement, the trial court abided by the agreement, and defendant did not move to withdraw his guilty pleas.

Affirmed.

/s/ Martin M. Doctoroff

/s/ Harold Hood

/s/ Paul J. Sullivan

¹ *People v Cobbs*, 443 Mich 276; 505 NW2d 208 (1993).

² Officer John Heisler, of the Hazel Park Police Department, testified that each time they bought from defendant, he indicated that he had to contact someone. They requested larger amounts hoping to meet the "bigger guy."

³ In *People v Vitale*, 179 Mich App 420, 422; 446 NW2d 504 (1989), this Court stated:

The trial court accepted defendant's plea and sentenced him under a sentence recommendation to which he agreed. Why should defendant now be heard to complain? It seems pointless to remand such a case to the trial court. Here, where

the prosecution and defendant agreed to the minimum sentence imposed, what are we to review and what are we to demand of the trial court?