

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ROBERT GERALD MCCANN,

Defendant-Appellant.

UNPUBLISHED
February 25, 1997

No. 193231
Macomb Circuit Court
LC No. 94-002313

Before: Wahls, P.J., and Gage and W.J. Nykamp,* JJ

PER CURIAM.

Defendant pleaded guilty to delivery of marihuana, MCL 333.7401(2)(c); MSA 14.15(701)(2)(c). The trial court sentenced defendant to one year probation. He appeals his sentence as of right, and we affirm.

Defendant argues that the sentence imposed violates the principle of proportionality as set forth in *People v. Milbourn*, 435 Mich 630; 461 N.W.2d 1 (1990), because his sentence does not reflect the nature of his offense or the fact that he had no prior record. In sentencing a defendant, the trial court must take into account the nature of the offense and the background of the offender. *Id.* at 651. A sentence within the guidelines' recommended minimum sentencing range is presumptively proportionate. *People v Daniel*, 207 Mich App 47, 54; 523 NW2d 830 (1994). Moreover, a defendant's lack of criminal history does not overcome that presumption. *Id.*

In defendant's case, the sentencing guidelines established a minimum sentencing range of zero to three months' imprisonment. Because defendant was not incarcerated, his sentence is at the lowest range of the applicable guidelines range and is therefore presumptively proportionate. The trial court accordingly did not abuse its discretion in sentencing defendant.

Affirmed.

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

/s/ Myron H. Wahls
/s/ Hilda R. Gage
/s/ Wesley J. Nykamp