

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee

v

CATHY LOUISE DUNCAN,

Defendant-Appellant

UNPUBLISHED

February 28, 1997

No. 191380

Jackson Circuit Court

LC No. 94-70576

Before: Corrigan, C.J., and Doctoroff and R.R. Lamb,* JJ.

PER CURIAM.

After entering a plea of guilty to a charge of delivery of less than 50 grams of crack cocaine, MCL 333.7401(2)(a)(iv); MSA 14.15(7401)(2)(a)(iv), defendant was sentenced to 3 to 20 years' imprisonment. Defendant now appeals as of right. We affirm.

Following defendant's guilty plea, the trial court indicated that it would offer defendant a sentence of lifetime probation under the condition that defendant complete a drug treatment program. Pursuant to this, the trial court deferred sentencing to give defendant the opportunity to complete a long term drug rehabilitation program. However, on November 4, 1995, defendant left the Dawn Farm Rehabilitation Program before successful completion and against the advice of the staff. Following her withdrawal from the program, a sentencing hearing was held on November 29, 1995.

The sentencing guidelines provided for a minimum sentence of 12 to 36 months' imprisonment. The record indicated that defendant had an extensive record of drug-related misdemeanors and that she had unsuccessfully attempted to complete several drug treatment programs. The trial court noted its attempt to show leniency and its attempt to rehabilitate defendant through the offer of lifetime probation if defendant were to complete the drug treatment program. After citing defendant's "refusal to take the benefits that the Court has offered," the trial court sentenced defendant to a prison term of 36 months to 240 months. Defendant now appeals, arguing that the sentence was disproportionate to defendant and defendant's crime. We disagree.

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

Because defendant's sentence was within the guidelines' range, it was presumptively valid. *People v Dukes*, 189 Mich App 262, 266; 471 NW2d 651 (1991). Based on defendant's eight prior drug-related misdemeanors, and her apparent unwillingness or inability to be rehabilitated, we find the sentence to be proper. See *People v Salgat*, 173 Mich App 742, 746; 434 NW2d 229 (1988). Defendant has not presented mitigating factors related to her criminal history or the circumstances of her offense which are of sufficient significance to overcome the presumption of proportionality. *Dukes, supra*. Accordingly, defendant's sentence is affirmed.

Defendant also argues that, after declining to sentence defendant to lifetime probation, the trial court should have offered defendant the opportunity to withdraw her plea. Defendant bases this argument on her assertion that the trial court required only that defendant ". . . get in some kind of drug treatment program." Defendant contends that the trial court did not mandate completion of any such program. We find such an argument specious and wholly without merit. Clearly the trial court required more than mere enrollment in a treatment program; actual rehabilitation was the obvious intent of the trial court's mandate.

In addition, despite defendant's characterization of lifetime probation as "the sentence previously agreed upon," at the time defendant entered her plea, trial court expressly stated, "*I have not made any agreement pertaining to any possible sentencing. But . . . I will go along with the lifetime probation and with a drug treatment program; providing that, you know, you're going to have to get in some kind of a drug treatment program.*" Because defendant was unable to complete the treatment program, the trial court sentenced defendant to a prison term within the sentencing guidelines. This did not constitute error. *People v Whiteside*, 437 Mich 188, 192-193; 468 NW2d 504 (1991); *Salgat, supra*. Defendant did not request withdrawal of her plea, nor did she object to the imposition of a prison sentence. On appeal, defendant offers no authority for her position that the trial court was obligated to offer her the opportunity to withdraw her guilty plea. Accordingly, we affirm defendant's sentence.

Affirmed.

/s/ Maura D. Corrigan
/s/ Martin M. Doctoroff
/s/ Richard R. Lamb