

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JUAN DUPRE PERRY,

Defendant-Appellant.

UNPUBLISHED

February 17, 1998

No. 195500

Recorder's Court

LC No. 95-001685

Before: Michael J. Kelly, P.J., and Fitzgerald and M.G. Harrison*, JJ.

MEMORANDUM.

In a jury trial, defendant was acquitted of possession with intent to deliver more than 50 but less than 225 grams of cocaine, MCL 333.7401(2)(a)(iii); MSA 14.15(7401)(2)(a)(iii), but convicted of receiving and concealing stolen property, MCL 750.535; MSA 28.803. On this appeal of right, he contends that the trial court erred at sentencing when it commented that, notwithstanding the acquittal on the drug charge, it was convinced by a preponderance of the evidence, based on what it heard at trial, that defendant had been involved with drugs and that his sentence should reflect this fact. The court then imposed a sentence in excess of the guideline range (zero to twelve months) of one and one-half to five years' imprisonment. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

There was no error in the trial court's factoring into the sentencing equation defendant's drug involvement as established by a preponderance of the evidence, based on the testimony and other evidence at trial, notwithstanding the fact that the jury acquitted defendant of the drug charge. *People v Shavers*, 448 Mich 389, 393-394; 531 NW2d 165 (1995); *People v Granderson*, 212 Mich App 673; 538 NW2d 471 (1995). Given these proper considerations, defendant's claim that his sentence is disproportionate to the offense and the offender is likewise without merit. The key test of proportionality is not whether the sentence departs from or adheres to the recommended guideline range, but whether it properly reflects the seriousness of the matter. *People v Lemons*, 454 Mich 234, 260; 562 NW2d 447 (1997). No abuse of the trial

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

court's sentencing discretion has been established on this record.

Affirmed.

/s/ Michael J. Kelly

/s/ E. Thomas Fitzgerald

/s/ Michael G. Harrison