

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

TIMOTHY C. SIMMONS,

Defendant-Appellant.

UNPUBLISHED

September 12, 2000

No. 211615

Oakland Circuit Court

LC No. 95-141239-FH

Before: Kelly, P.J., and White and Wilder, JJ.

PER CURIAM.

Defendant appeals as of right from his jury trial convictions for conspiracy to deliver less than fifty grams of cocaine, MCL 333.7401(2)(a)(iv); MSA 14.15(7401)(2)(iv); MCL 750.157a; MSA 28.354(1), delivery of less than fifty grams of cocaine, MCL 333.7401(2)(iv); MSA 14.15(7401)(2)(iv), and possession of less than twenty-five grams of cocaine, MCL 333.7403(2)(a)(v); MSA 14.14(7403)(2)(a)(v). Defendant was also convicted, following a separate trial, of being a felon in possession of a firearm, MCL 750.224f; MSA 28.421(6).

Defendant was sentenced as an habitual offender, second offense, MCL 769.10; MSA 28.1082, to two to thirty years' imprisonment for the conspiracy conviction, and to two to thirty years' imprisonment for the delivery conviction, sentences to run consecutively. He was also sentenced to one to six years' imprisonment for the possession conviction, and one to seven years' imprisonment for the felon-in-possession conviction, sentences to run concurrently.¹

Defendant's only issue on appeal is that the trial court abused its discretion in imposing a disproportionate sentence contrary to the principle of proportionality mandated by the Michigan Supreme Court's decision in *People v Milbourn*, 435 Mich 630, 653-654; 461 NW2d 1 (1990). We disagree.

We review sentences for an abuse of discretion. *People v Phillips (On Rehearing)*, 203 Mich App 287, 290; 512 NW2d 62 (1994). Because defendant was sentenced as an habitual offender, the sentencing guidelines do not apply. See *People v Gatewood*, 450 Mich 1025; 546 NW2d 252 (1996). Furthermore, the sentencing guidelines may not be considered on appeal in determining

whether the sentences imposed were disproportionate. *People v Gatewood (On Remand)*, 216 Mich App 559, 560; 550 NW2d 265 (1996).

In this case, defendant's minimum sentences fell at the low end of the statutory range for each conviction. Additionally, despite defendant's contentions to the contrary, the trial court considered defendant's individual circumstances, such as his eagerness for rehabilitation, his significant progress while incarcerated, and the presence of his concerned family. Nevertheless, considering the facts that led up to defendant's current convictions, the fact that he committed these offenses while free on bond for charges relating to other drug offenses, and his prior felony conviction of attempted felonious assault, the trial court had broad discretion to sentence him to a period of incarceration up to thirty years. MCL 769.10(1)(a); MSA 28.1082(1)(a). In light of these factors, the sentences were proportionate to both the offense and the offender, and we find no abuse of discretion.

Affirmed.

/s/ Michael J. Kelly

/s/ Helene N. White

/s/ Kurtis T. Wilder

¹ This matter was previously before this Court. *People v Simmons*, unpublished opinion per curiam of the Court of Appeals, issued October 7, 1997 (Docket No. 193658). We affirmed defendant's convictions, but vacated his sentences and remanded the case for resentencing on our finding that the trial court erred in imposing consecutive sentences for defendant's possession and felon-in-possession convictions reasoning that there was no legislative support for such a decision.