

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

V

GARY LANKFORD,

Defendant-Appellant.

UNPUBLISHED
September 9, 2003

No. 240003
Wayne Circuit Court
LC No. 01-006077

Before: Markey, P.J., and Cavanagh and Saad, JJ.

MEMORANDUM.

Defendant appeals as of right his jury conviction for felon in possession of a firearm, MCL 750.224f, and felony-firearm, MCL 750.227b. We affirm with modification to the sentences.

Defendant asserts that the court erred in making his two sentences consecutive where the felony-firearm charge was only linked to a murder charge for which defendant was acquitted. The prosecutor concedes that the sentences should have been concurrent. *People v Hunter*, 141 Mich App 225; 367 NW2d 70 (1985).

Defendant asserts that the trial court abused its discretion in imposing a disproportionate sentence. MCL 769.34(10) provides:

If a minimum sentence is within the appropriate guidelines sentence range, the court of appeals shall affirm that sentence and shall not remand for resentencing absent an error in scoring the sentencing guidelines or inaccurate information relied upon in determining the defendant's sentence.

The clear language of this subsection compels the conclusion that the Legislature intended to preclude any appellate scrutiny of sentences falling within the appropriate guidelines range absent scoring errors or reliance on inaccurate information. *People v Babcock*, 244 Mich App 64, 73; 624 NW2d 479 (2000). The statute does not show any intent to incorporate the principle of proportionality into the new sentencing review framework. *Id.*, 78.

Defendant argues that he should be resentenced because he did not have sufficient time to respond to the prosecutor's sentencing memorandum. MCR 6.425(B) does not provide any time requirements for the filing of a sentencing memorandum. Defendant did not object to the late

receipt of the memorandum, and he has not shown that he was prejudiced by any information in the document.

Affirmed in part, and remanded to modify defendant's sentences to run concurrently with each other. We do not retain jurisdiction.

/s/ Jane E. Markey
/s/ Mark J. Cavanagh
/s/ Henry William Saad