

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

EDDIE DEAN WILLIAMS, JR.,

Defendant-Appellant.

UNPUBLISHED

May 7, 1999

No. 206777

Ingham Circuit Court

LC No. 97-071700 FH

Before: Holbrook, P.J., and Murphy and Talbot, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of possession of less than twenty-five grams of cocaine, in violation of MCL 333.7403(2)(a)(v); MSA 14.15(7403)(2)(a)(v). Pursuant to MCL 333.7413(2); MSA 14.15(7413)(2), defendant received an enhanced sentence of thirty to ninety-six months in prison. Defendant appeals as of right and we affirm.

On appeal, defendant raises four sentencing issues. First, defendant argues that this Court should remand for resentencing because it is unclear whether the trial court recognized its discretion to sentence defendant to less than the eight-year (ninety-six month) maximum sentence allowed by MCL 333.7413(2); MSA 14.15(7413)(2). We disagree.

The decision whether to enhance a defendant's sentence for a second or subsequent controlled substances offense under MCL 333.7413(2); MSA 14.15(7413)(2), is discretionary rather than mandatory. See *People v Green*, 205 Mich App 342, 345-346; 517 NW2d 872 (1994). Accordingly, if a trial court mistakenly believes that the imposition of an enhanced sentence is mandatory, the defendant is entitled to resentencing. *Green, supra* at 346. In this case, defendant argues that the trial court was operating under such a belief. In support of this contention, defendant relies on the trial court's comment that defendant's maximum sentence, as provided by law, was eight years [ninety-six months]. We do not think that this comment indicated a mistaken belief on the part of the trial court that the imposition of an enhanced sentence under MCL 333.7413(2); MSA 14.15(7413)(2) was mandatory. Instead, the trial court's comment merely indicated a belief that it could not go beyond the maximum eight year sentence allowed by the enhancement provision. The fact that the trial court failed to affirmatively acknowledge its discretion is immaterial. In the absence of

proof to the contrary, trial judges are presumed to know and follow the law. See *People v Garfield*, 166 Mich App 66, 79; 420 NW2d 124 (1988); *People v Farmer*, 30 Mich App 707, 711; 186 NW2d 779 (1971). Therefore, we hold that defendant is not entitled to resentencing on the basis of this allegation of error.

Defendant next argues that he is entitled to resentencing because of an error in the scoring of the sentencing guidelines. We disagree. Defendant's argument on appeal is without merit because it ignores the rule that "[a] putative error in the scoring of sentencing guidelines is simply not a basis upon which an appellate court can grant relief." See *People v Raby*, 456 Mich 487, 499; 572 NW2d 644 (1998).

Next defendant argues that a copy of the Sentencing Information Report (SIR), as amended, should be included in the Presentence Investigation Report (PSIR). We disagree. Defendant has cited no persuasive authority for the proposition that we should remand this case for the purpose of instructing the trial court to add the amended SIR to the PSIR.

Finally, defendant argues that his thirty to ninety-six month sentence was disproportionately severe. We disagree. Sentencing decisions are subject to review by this Court on an abuse of discretion standard. *People v Milbourn*, 435 Mich 630, 635-636; 461 NW2d 1 (1990). A sentence constitutes an abuse of the trial court's discretion if it violates the principle of proportionality. The principle of proportionality requires sentences to be "proportionate to the seriousness of the circumstances surrounding the offense and the offender." *Id.* at 636. Because defendant was sentenced pursuant to MCL 333.7413(2); MSA 14.15(7413)(2), he was considered an "habitual offender" for purposes of the sentencing guidelines. *People v Williams*, 205 Mich App 229, 231; 517 NW2d 315 (1994). Accordingly, the guidelines have no bearing on the issue whether the trial court abused its discretion in sentencing defendant. *People v Edgett*, 220 Mich App 686, 694; 560 NW2d 360 (1996). Here, the record indicated that defendant took money allotted for household expenses to buy cocaine, and that he brought cocaine into his residence despite the presence of young children. Furthermore, defendant's presentence report indicates that defendant repeatedly violated his probation for past drug offenses. Based on these factors, we conclude that defendant's sentence was "proportionate to the seriousness of the circumstances surrounding the offense and the offender." *Milbourn, supra* at 636.

Affirmed.

/s/ Donald E. Holbrook, Jr.

/s/ William B. Murphy

/s/ Michael J. Talbot