

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

OTEAGO WILLIAMS,

Defendant-Appellant.

UNPUBLISHED

March 23, 2006

No. 257334

Wayne Circuit Court

LC No. 04-004965-01

Before: Cooper, P.J., and Jansen and Markey, JJ.

PER CURIAM.

Defendant was convicted by a jury of felon in possession of a firearm, MCL 750.224f(1), possession of marijuana with intent to deliver, MCL 333.7401(2)(d)(iii), and possession of a firearm during the commission of a felony, MCL 750.227b. He was sentenced as a second habitual offender, MCL 769.10, to concurrent terms of one to seven years for felon in possession and one to six years for possession of marijuana, to be served consecutively to the mandatory two-year term for felony-firearm. Defendant appeals his sentences as of right. We affirm in part, reverse in part, and remand for resentencing on the conviction of felon in possession. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant first contends that the trial court erred in imposing a one-year minimum sentence for the conviction of felon in possession of a firearm because the guidelines set a maximum minimum sentence of eleven months. The application of the statutory guidelines is reviewed de novo on appeal. *People v Cook*, 254 Mich App 635, 638; 658 NW2d 184 (2003).

The guidelines as scored for felon in possession of a firearm set a minimum sentence range of zero to eleven months. When the upper limit of the applicable guidelines range is eighteen months or less, “the court shall impose an intermediate sanction unless the court states on the record a substantial and compelling reason to sentence the individual to the jurisdiction of the department of corrections. An intermediate sanction may include a jail term that does not exceed the upper limit of the recommended minimum sentence range or 12 months, whichever is less.” MCL 769.34(4)(a). An intermediate sanction does not include a prison sentence. *People v Stauffer*, 465 Mich 633, 635; 640 NW2d 869 (2002).

The trial court did not acknowledge that it was departing from the guidelines and, while it stated some reasons for the sentences imposed, it did not identify them as substantial and compelling reasons warranting a prison sentence, much less the particular sentence imposed.

Accordingly, we remand for resentencing as to the conviction for felon in possession of a firearm. *People v Babcock*, 469 Mich 247, 258-260; 666 NW2d 231 (2003); *People v Johnigan*, 265 Mich App 463, 477-478; 696 NW2d 724 (2005).

Defendant next contends that his sentence for the controlled substance offense violated the principle of proportionality under *People v Milbourn*, 435 Mich 630; 461 NW2d 1 (1990). The guidelines for possession of marijuana with intent to deliver set a minimum sentence range of zero to twenty-one months, and defendant's minimum sentence was within the guidelines. Because defendant does not claim error in the scoring of the guidelines of the use of inaccurate information at sentencing, his sentence is not reviewable for proportionality. MCL 769.34(10); *People v Pratt*, 254 Mich App 425, 429-430; 656 NW2d 866 (2002). We reject defendant's constitutional challenge to MCL 769.34(10). *People v Garza*, 469 Mich 431, 435; 670 NW2d 662 (2003).

We affirm defendant's sentence for possession of marijuana with intent to deliver and remand for resentencing on the conviction of felon in possession of a firearm. Jurisdiction is not retained.

/s/ Jessica R. Cooper

/s/ Kathleen Jansen

/s/ Jane E. Markey