

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff- Appellee,

v

TRUDELL CHENIRE WRIGHT,

Defendant- Appellant.

UNPUBLISHED

January 17, 1997

No. 181159

Saginaw Circuit Court

LC No. 94-9267-FH-3

Before: Markman, P.J., and O'Connell and D. J. Kelly,* JJ.

PER CURIAM.

Defendant appeals by right his convictions of delivery of less than fifty grams of cocaine, MCL 333.7401(2)(a)(iv); MSA 14.15(7401)(2)(a)(iv), pursuant to a plea of guilty and of felonious assault, MCL 750.82; MSA 28.277, pursuant to a plea of nolo contendere. These convictions arise out of incidents in which defendant sold crack cocaine to an undercover officer and purposely rammed his car into a police officer's car in an apparent effort to flee. The trial court sentenced defendant to consecutive sentences of eight to twenty years' imprisonment for the cocaine delivery count and one to four years' imprisonment on the felonious assault count. We affirm.

Defendant first claims that the PSIR contains a false statement: "BAYANET officers advised this agent they felt the defendant was a major crack cocaine dealer to younger persons in the Saginaw area." Defendant did not object to this statement during sentencing. This Court generally does not entertain PSIR challenges that are not raised at sentencing. *People v Hamm*, 206 Mich App 270, 273; 520 NW2d 706 (1994); MCR 6.429(C). Alternatively, defendant contends that his trial counsel's failure to challenge this statement during sentencing constitutes ineffective assistance of counsel. In order to justify reversal of an otherwise valid conviction on the basis of ineffective assistance of counsel, "a defendant must show that a counsel's performance fell below an objective standard of reasonableness, and that the representation so prejudiced the defendant as to deprive him of a fair trial." *People v Pickens*, 446 Mich 298, 302-303; 521 NW2d 797 (1994). Here, in sentencing defendant, the trial

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

court stated that “this offense is a pattern of criminal activity over a period of time from which the defendant derived a substantial portion of his income.” This observation is easily supported by defendant’s own version of the incident included in the PSIR, independent of the disputed statement. Accordingly, the failure to challenge the disputed statement did not prejudice defendant’s right to a fair trial and thus did not constitute ineffective assistance of counsel.

Defendant next claims that his sentence was disproportionate. This Court reviews sentences for an abuse of discretion. *People v Milbourn*, 435 Mich 630, 636; 461 NW2d 1 (1990). The principle of proportionality requires that sentences “be proportionate to the seriousness of the circumstances surrounding the offense and the offender.” *Id.* A minimum sentence within the guidelines’ range is presumptively proportionate; a defendant must present “mitigating factors relating to his criminal history or the circumstances of [the offense at issue] to overcome this presumption.” *People v Vettese*, 195 Mich App 235, 246-247; 489 NW2d 514 (1992). The sentence at issue was within the guidelines’ range of 24 to 96 months. At sentencing, defendant presented no mitigating circumstances relating to his criminal history or the offenses at issue. He was on probation for a trespassing offense at the time he committed the offenses at issue. As noted above, the trial court found that these offenses were part of “a pattern of criminal activity over a period of time from which the defendant derived a substantial portion of his income.” Under these circumstances, we find no abuse of discretion in the sentences imposed.

Finally, defendant claims that the trial court erred in amending the judgment of sentence to provide for consecutive rather than concurrent sentences. MCL 333.7401(3); MSA 14.15(7401)(3) mandates that a term of imprisonment imposed pursuant to subsection (2)(a) run consecutively with any term imposed for the commission of another felony. See *People v Kent*, 194 Mich App 206, 208-9; 486 NW2d 110 (1992). Therefore, as a matter of law, the sentences at issue were to run consecutively. The initial judgment of sentence providing for concurrent sentences was invalid. Accordingly, the trial court appropriately corrected the invalid sentences by amending the judgment of sentence to provide for consecutive sentences. See MCR 6.429(A).

For these reasons, we affirm the judgment of sentence.

/s/ Stephen J. Markman

/s/ Peter D. O’Connell

/s/ Daniel J. Kelly