

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

TERRY MICHAEL SWANT,

Defendant-Appellant.

UNPUBLISHED

January 31, 1997

No. 189194

Kalamazoo Circuit Court

LC No. 95-000081-FH

Before: Hoekstra, P.J., and Markey and J.C. Kingsley,* JJ.

PER CURIAM.

Pursuant to a plea agreement, defendant pleaded guilty to possession with the intent to deliver methamphetamines, MCL 333.7401(2)(b); MSA 14.15(7401)(2)(b), and to being a second habitual offender, MCL 769.10; MSA 28.1082. In exchange for the plea, the prosecutor dropped another drug-related charge and recommended that defendant's minimum sentence not exceed two years. Defendant was sentenced to two to seven years' imprisonment. He appeals as of right from his sentence. We affirm.

A sentence must be proportionate to the seriousness of the circumstances surrounding the crime and the offender. *People v Milbourn*, 435 Mich 630, 635-636, 654; 461 NW2d 1 (1990). *Milbourn* does not address the unique sentencing situation that arises, however, when a defendant pleads guilty to a charge in exchange for dismissal of other or greater charges. *People v Brzezinski (After Remand)*, 196 Mich App 253, 256; 492 NW2d 781 (1992). "Such pleas will invariably present the sentencing judge with important factors that may not be adequately embodied in the guideline variables," *People v Duprey*, 186 Mich App 313, 318; 463 NW2d 240 (1990), so departure from the guidelines is often justified on this basis, *People v Butts*, 144 Mich App 637, 640-641; 376 NW2d 176 (1985). Moreover, the sentencing guidelines do not apply to habitual offender convictions. *People v Cervantes*, 448 Mich 620, 622, 625-630; 532 NW2d 831 (1995). Thus, when reviewing the sentences of habitual offenders, this Court should determine whether the trial court

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

abused its discretion in imposing the sentence. *Id.* at 626-630, 636-637; *People v Gatewood (On Remand)*, 216 Mich App 559, 560; 550 NW2d 265 (1996).

Here, we find no abuse of discretion. See *People v Broden*, 428 Mich 343, 350; 408 NW2d 789 (1987). Defendant's minimum sentence of two years was the maximum minimum that the prosecutor recommended pursuant to the plea agreement. Moreover, the trial court stated that it did not enhance defendant's sentence; instead, it gave him the statutory maximum sentence of seven years. Defendant has failed to provide evidence of unusual circumstances mitigating against his sentence or evidence that the trial court abused its discretion. Indeed, he admitted driving from Iowa to Michigan to purchase a large quantity of methamphetamines with the intent to deliver at a time when he was released on bond for similar charges in Iowa.¹ Considering the circumstances surrounding both the offense and this offender, we find that defendant's sentence was proportionate.

Affirmed.

/s/ Joel P. Hoekstra

/s/ Jane E. Markey

/s/ James C. Kingsley

¹ Those Iowa charges were subsequently dismissed.