

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DATRIUS LEON MCKINNEY, a/k/a
DATRIUM LEON MCKINNIE,

Defendant-Appellant.

UNPUBLISHED
February 28, 1997

No. 176027
Oakland Circuit
LC No. 92-119177-FH

Before: D.F. Walsh,* P.J., and R.P. Griffin** and W.P. Cynar,* JJ.

MEMORANDUM.

Defendant pleaded guilty of two counts of delivery or possession with intent to deliver cocaine less than fifty grams, MCL 333.7401(2)(a)(iv); MSA 14.15(7401)(2)(a)(iv), and was sentenced to identical terms of one-and-a-half to twenty years' imprisonment, to be served consecutively. He appeals as of right. We affirm. This case has been decided without oral argument pursuant to MCR 7.214(E)(1)(b).

Defendant argues that his plea was involuntary and that he was denied the effective assistance of counsel. Although defendant moved to withdraw his plea, he has not filed a copy of the transcript of the motion hearing. Those claims are therefore abandoned. *People v Johnson*, 173 Mich App 706, 707; 434 NW2d 218 (1988); *People v Kelly*, 122 Mich App 427, 429-430; 333 NW2d 68 (1983); *People v Sparks*, 82 Mich App 44, 51-52; 266 NW2d 661 (1978).

Defendant next argues that his sentences are disproportionate because they are consecutive and because he had no prior criminal record. We disagree. The proportionality of a sentence is determined

*Former Court of Appeals judges, sitting on the Court of Appeals by assignment pursuant to Administrative Order 1996-10.

**Former Supreme Court justice, sitting on the Court of Appeals by assignment pursuant to Administrative Order 1996-10.

without regard for other consecutive sentences imposed. *People v Marshall Warner*, 190 Mich App 734; 476 NW2d 660 (1991). Even if considered together, the two consecutive sentences resulted in a total minimum sentence within the sentencing guidelines' recommended range for a single sentence, to wit: one to three years. Defendant did not deserve a lower sentence due to his lack of a criminal record since that factor is already considered in the calculation of the guidelines and is not entitled to double consideration. *People v Milbourn*, 435 Mich 630, 658-659; 461 NW2d 1 (1990).

Finally, defendant argues that his second conviction should be vacated because it arose out of the same transaction or occurrence as the first conviction. We disagree. Defendant sold cocaine to an undercover officer. When the officers tried to arrest defendant, he fled to a house and was found flushing cocaine down the toilet. Those occurrences were sufficiently different to support separate convictions. See *People v Bartlett*, 197 Mich App 15; 494 NW2d 776 (1992) (back-to-back sales to two undercover officers in the same car are separate offenses and may properly result in separate convictions); *People v Cuellar*, 76 Mich App 20, 22-23; 255 NW2d 755 (1977).

Affirmed.

/s/ Daniel F. Walsh

/s/ Robert P. Griffin

/s/ Walter P. Cynar