

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ALLEN CLABIN, JR.,

Defendant-Appellant.

UNPUBLISHED

March 14, 1997

No. 191609

Berrien Circuit Court

LC No. 92-000787

Before: Bandstra, P.J., and Hoekstra and J.M. Batzer,* JJ.

PER CURIAM.

Defendant pleaded guilty to delivery of less than fifty grams of cocaine, MCL 333.7401(2)(a)(iv); MSA 14.15(7401)(2)(a)(iv), and to being a second-time controlled substance offender, MCL 333.7413(2); MSA 14.15(7413)(2). He was initially sentenced to eight to forty years' imprisonment. Thereafter, the trial court granted defendant's motion for relief from judgment by vacating the second controlled substance offender enhancement and granting resentencing. Defendant was subsequently resentenced to eight to twenty years' imprisonment. He now appeals, and we affirm.

Defendant argues that the trial court erred in assessing fifteen points for Offense Variable (OV) 25, contemporaneous criminal acts. We disagree. This Court's review of scoring decisions is very limited. *People v Hoffman*, 205 Mich App 1, 24; 518 NW2d 817 (1994). A trial court's scoring of points will be upheld if there is evidence to support the score. *People v Hernandez*, 443 Mich 1, 16; 503 NW2d 629 (1993); *Hoffman, supra*.

In this case, evidence existed to support the assessment of fifteen points for OV 25. The presentence investigation report states that defendant admitted to the delivery of cocaine to Officer Kim Berry on three separate occasions, two of which could be used to score OV 25. As part of his plea agreement, defendant also agreed to make restitution for these drug transactions as well as another drug transaction involving Officer Dave Rosenau, which was the third contemporaneous act used to score OV 25. Thus, evidence exists on the record to support three contemporaneous criminal acts,

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

which did not result in separate convictions. The trial court did not err in assessing fifteen points for OV 25.

Defendant also asserts that the trial court erred in ordering him to pay restitution to a government entity. Because there is no order in this case requiring defendant to pay restitution, we cannot address this issue. *Law Offices of Lawrence J Stockler, PC v Rose*, 174 Mich App 14, 54; 436 NW2d 70 (1989)(“A court speaks through its orders, and the jurisdiction of this Court is confined to judgments and orders.”).

Defendant further argues that his sentence violates the principle of proportionality set forth in *People v Milbourn*, 435 Mich 630; 461 NW2d 1 (1990). We disagree. Defendant’s sentence is within the minimum guidelines’ range and is therefore presumptively proportionate. *People v Broden*, 428 Mich 343, 354-355; 408 NW2d 789 (1987). We have reviewed defendant’s argument that he played a minimal role in the offense and conclude that defendant has failed to present any unusual circumstances to overcome the presumption of proportionality. *Milbourn, supra* at 661; *People v Daniel*, 207 Mich App 47, 54; 523 NW2d 830 (1994). Thus, the trial court did not abuse its discretion in sentencing defendant. *Milbourn, supra* at 636.

We affirm.

/s/ Richard A. Bandstra

/s/ Joel P. Hoekstra

/s/ James M. Batzer