

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ROBERT HAROLD NUNNERY,

Defendant-Appellant.

UNPUBLISHED

April 4, 1997

No. 194713

Kalamazoo Circuit Court

LC No. 94-001522-FH

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

MEMORANDUM.

Defendant pleaded guilty of possession of a non-narcotic controlled substance, MCL 333.7403(2)(b); MSA 14.15(7403)(2)(b), and was sentenced to sixteen to twenty-four months' imprisonment. He appeals as of right. We affirm. This case has been decided without oral argument pursuant to MCR 7.214(E)(1)(b).

Defendant's sentence does not violate the principle of proportionality even though the trial court exceeded the recommended range of the sentencing guidelines. *People v Milbourn*, 435 Mich 630, 636; 461 NW2d 1 (1990). The trial court exceeded the guidelines based upon defendant's extensive criminal history and his history of substance abuse, which he failed to address through treatment. On the facts of this case, these were proper reasons for exceeding the guidelines. *People v Houston*, 448 Mich 312, 320; 532 NW2d 508 (1995). Defendant made a significant plea bargain in this case in which he avoided enhanced sentencing under the controlled substances act and as an habitual offender. The scoring of the guidelines did not take this into account. *People v Anthony Williams*, 191 Mich App 685, 687-688; 479 NW2d 36 (1992). Furthermore, the court gave defendant the opportunity to seek treatment for his substance abuse when the court delayed sentencing, but defendant failed to

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

complete the treatment program. It therefore was appropriate for the court to sentence defendant to a term in excess of the guidelines' range. The amount of the court's departure is not disproportionate. *Milbourn, supra*.

Affirmed.

/s/ Daniel F. Walsh

/s/ Robert P. Griffin

/s/ Walter P. Cynar