

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee

v

FRANK STEWART,

Defendant-Appellant

UNPUBLISHED

September 19, 1997

No. 196794

Genesee Circuit Court

LC No. 95-052016 FH

Before: Markey, P.J., and Neff and Smolenski, JJ.

MEMORANDUM.

Defendant pleaded guilty to possession with intent to deliver less than 50 grams of cocaine, MCL 333.7401(1) and (2)(a)(iv); MSA 14.15(7401)(1) and (2)(a)(iv), and conspiracy, MCL 750.157a; MSA 28.354(1), and was consecutively sentenced to three to twenty years' and two to twenty years' imprisonment, respectively. Defendant appeals as of right. We affirm. This case is being decided without oral argument pursuant to MCR 7.214(E).

Defendant's contention that, in sentencing him to twenty-year maximum sentences, the court erred in believing that it had no discretion to impose maximum sentences of a lesser duration lacks record support. *People v Perry*, 201 Mich App 347; 505 NW2d 909 (1993); *People v Leighty*, 161 Mich App 565; 411 NW2d 778 (1987).

The trial court did not err when it permitted defendant to waive the preparation of an updated presentence investigation report where (1) the court sentenced defendant using an eight-month old presentence report prepared for the purpose of sentencing defendant in this case, (2) the court afforded defendant and his counsel the opportunity to make additions to the report, and (3) the court updated the report during sentencing to reflect changes in defendant's age, counsel and conviction date, the amount of sentence credit to which defendant was entitled and the disposition of a criminal charge since the preparation of the report. *People v Hemphill*, 439 Mich 576; 487 NW2d 152 (1992).

Defendant's claim that the trial court breached the sentence agreement lacks record support. The court sentenced defendant consistent with the terms of that agreement. *People v Nixten*, 183 Mich App 95; 454 NW2d 160 (1990).

Defendant's claim that the trial court erroneously imposed consecutive sentences also lacks merit. *People v Denio*, 454 Mich 691; 564 NW2d 13 (1997).

Affirmed.

/s/ Jane E. Markey

/s/ Janet T. Neff

/s/ Michael R. Smolenski