

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

WILLIAM DAVIS GARDNER,

Defendant-Appellant.

UNPUBLISHED

October 2, 1998

No. 199810

Macomb Circuit Court

LC No. 94-002452 FH

Before: Whitbeck, P.J., and McDonald and T. G. Hicks*, JJ.

MEMORANDUM.

Defendant pleaded guilty to possession with intent to deliver less than fifty grams of cocaine, MCL 333.7401(1) and (2)(a)(iv); MSA 14.15(7401)(1) and (2)(a)(iv), and received a sentence of three to twenty years' imprisonment. We affirm.

We reject defendant's claim that he was deprived of his due process right to be sentenced based on accurate information. *Townsend v Burke*, 334 US 736; 68 S Ct 1252; 92 L Ed 1690 (1948). Defendant has failed to show that his sentence was based on inaccurate information where the sentencing court indicated on the record at the hearing on defendant's motion for resentencing that it did not rely on the inaccurate information when imposing sentence.

We also reject defendant's claim that his sentence violates the principle of proportionality. Defendant has failed to overcome the presumption of proportionality that attends a sentence within the sentencing guidelines recommendation, particularly in light of the leniency shown defendant by the plea agreement. *People v Dixon*, 217 Mich App 400, 412; 552 NW2d 663 (1996); *People v Eberhardt*, 205 Mich App 587, 591; 518 NW2d 511 (1994).

Affirmed.

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

/s/ William C. Whitbeck

/s/ Gary R. McDonald

/s/ Timothy G. Hicks