

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ELVIS EUGENE EDGER PEACOCK,

Defendant-Appellant.

UNPUBLISHED

February 16, 1999

No. 198949

Mecosta Circuit Court

LC No. 95-003683 FH

Before: Markman, P.J., and Bandstra and J.F. Kowalski*, JJ.

MEMORANDUM.

Defendant pleaded guilty to possession with intent to deliver less than five kilograms or fewer than twenty plants of marijuana, MCL 333.7401(1) and (2)(d)(iii); MSA 14.15(7401)(1) and (2)(d)(iii), and was sentenced to thirty-two to forty-eight months' imprisonment. Defendant appeals by leave granted. We affirm.

We decline defendant's invitation to determine whether the Michigan Sentencing Guidelines apply to a conviction for possession with intent to deliver marijuana secured pursuant to § 7401(2)(d)(iii). The guidelines do not have the force of law. *People v Mitchell*, 454 Mich 145, 175; 560 NW2d 600 (1997). Accordingly, the scoring of the guidelines is not an end in itself but rather a means to achieve a proportionate sentence. *People v Raby*, 456 Mich 487, 496; 572 NW2d 644 (1998). In the instant case, defendant has not challenged the proportionality of his sentence. Our review of the record reveals the sentence to be proportionate, particularly in light of the benefit bestowed upon defendant by the plea agreement, the duration of defendant's involvement in marijuana trafficking and the amount of marijuana sold by defendant. *People v Milbourn*, 435 Mich 630; 461 NW2d 1 (1990); *People v Dixon*, 217 Mich App 400, 412; 552 NW2d 663 (1996). Because defendant's sentence is not disproportionate, there is no basis for

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

relief on appeal. *Raby*, 456 Mich 496; *Mitchell*, 454 Mich 176-177.

Affirmed.

/s/ Stephen J. Markman

/s/ Richard A. Bandstra

/s/ John F. Kowalski