

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

BRUCE ALLAN GREEN,

Defendant-Appellant.

UNPUBLISHED

April 30, 1999

No. 203031

Genesee Circuit Court

LC No. 96-053474 FH

Before: Gage, P.J., and Gribbs and Hoekstra, JJ.

MEMORANDUM.

Defendant appeals by delayed leave granted his sentences of twelve to twenty years and two and one-half to five years for his plea-based convictions of possession with intent to deliver less than fifty grams of cocaine, MCL 333.7401(2)(a)(iv); MSA 14.15(7401)(2)(a)(iv), and felon in possession of a firearm, MCL 750.224f; MSA 28.421(6), respectively. We affirm.

Defendant pleaded guilty in exchange for dismissal of a charge of possession of a firearm during the commission of a felony, MCL 750.227b; MSA 28.424(2), and a supplemental charge of habitual offender, third, offense, MCL 769.11; MSA 28.1083. The evidence showed that defendant possessed slightly more than one gram of cocaine. The court sentenced defendant to concurrent terms of twelve to twenty years and two and one-half to five years in prison for the convictions of possession with intent to deliver less than fifty grams of cocaine and felon in possession of a firearm. Defendant received credit for one 124 days served. The minimum term of twelve years for the possession conviction was within the recommended guideline range of 60 to 160 months.

Defendant argues that his minimum sentence of twelve years for possession with intent to deliver less than fifty grams of cocaine, while within the guidelines, is disproportionate and thus constitutes cruel and unusual punishment. US Const, Am VIII; Const 1963, art 1, § 16. We disagree and affirm. Sentence length is reviewed pursuant to the principle of proportionality. A sentence must be “proportionate to the seriousness of the circumstances surrounding the offense and the offender.” *People v Milbourn*, 435 Mich 630, 636; 461 NW2d 1 (1990). A sentence that falls within the guidelines is presumed to be proportionate. *People v Hogan*, 225 Mich App 431, 437; 571 NW2d 737 (1997). The key test of the proportionality of a sentence is whether it reflects the seriousness of the

matter. *People v Houston*, 448 Mich 312, 320; 532 NW2d 508 (1995). In imposing the sentence that it did, the court noted defendant's significant prior record, and the fact that previous periods of imprisonment and probation had failed to rehabilitate defendant. The court's articulation of reasons for imposing the sentence that it did was sufficient. *People v Sandlin*, 179 Mich App 540, 542; 446 NW2d 301 (1989). The factors cited by defendant, i.e., the amount of cocaine involved and his substance abuse problem, do not overcome the presumption that the sentence is proportionate. *People v Daniel*, 207 Mich App 47, 54; 523 NW2d 830 (1994).

Affirmed.

/s/ Hilda R. Gage
/s/ Roman S. Gribbs
/s/ Joel P. Hoekstra