STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED July 23, 1999
v	No. 208633 Emmet Circuit Court
JOHN WILLIAM BROWN, Defendant-Appellant.	LC No. 96-103007 FH

Before: McDonald, P.J., and Kelly and Cavanagh, JJ.

PER CURIAM.

Defendant appeals as of right his jury trial convictions of two counts of delivery of marijuana, MCL 333.7401(2)(d)(iii); MSA 14.15(7401)(2)(d)(iii), and one count of manufacture of marijuana, MCL 333.7401(2)(d)(ii); MSA 14.15(7401)(2)(d)(ii). The trial court sentenced defendant to concurrent prison terms of eighteen to forty-eight months for the two delivery convictions and sixty to 168 months for the manufacturing conviction. We affirm defendant's convictions and sentences but remand for the ministerial task of amending the judgment of sentence to reflect that defendant's sentence was enhanced under the repeat drug offender provision of the controlled substances act, MCL 333.7413(2); MSA 14.15(7413)(2).

I

Defendant first claims that the trial court erred by refusing to appoint an expert botanist to count and identify the plants seized from his residence. This Court reviews a trial court's decision to appoint or refuse to appoint an expert witness for an indigent defendant for an abuse of discretion. *People v Thornton*, 80 Mich App 746, 752; 265 NW2d 35 (1978). This Court will find an abuse of discretion only when an unprejudiced person, considering the facts on which the trial court acted, would say there is no justification or excuse for the ruling made. *People v Ullah*, 216 Mich App 669, 673; 550 NW2d 568 (1996).

A trial court does not err when it denies a motion for appointment of an expert witness if there is no indication that expert testimony would likely benefit the defense. *People v Jacobsen*, 448 Mich 639, 641; 532 NW2d 838 (1995); *People v Leonard*, 224 Mich App 569, 582; 569 NW2d 663

(1997). We conclude that the trial court correctly found that defendant failed to establish that the appointment of an expert would likely benefit the defense.

Defendant argues that he was entitled to the appointment of an expert witness because of a discrepancy in the number of plants reported found at his residence: Sergeant Brege and Officer Shrift both testified to finding twenty-two plants in defendant's residence, while the warrant tabulation indicated that twenty-five plants had been seized. However, defendant has made no showing that resolution of this discrepancy would benefit him. MCL 333.7401(2)(d)(ii); MSA 14.15(7401)(2)(d)(ii) prohibits the possession and manufacture of "20 plants or more but fewer than 200 plants." Defendant has presented no evidence that the police recovered fewer than twenty plants. Moreover, defendant has presented nothing that would indicate that some of the plants seized were not marijuana. On this record, we cannot find that the trial court abused its discretion in denying defendant's request for the appointment of an expert witness.

II

Defendant next argues that the trial court erred in admitting both the marijuana plants and photographs of the marijuana plants. The decision whether to admit or exclude evidence is within the trial court's discretion. *Ullah*, *supra*.

Defendant contends that the marijuana plants should not have been admitted because they had been significantly changed when the police dried them. Testimony was presented that the police dried the plants because otherwise they would become moldy in the storage bags. Defendant, however, argues that the actions of the police constitute tampering with the evidence. Defendant further maintains that the police should not have stored the plants in bags, but rather should have cultivated them in their original containers, keeping them trimmed to the same height as when seized.

For evidence to be admissible, the prosecution need only show that it took reasonable steps to preserve the original condition of the evidence. *People v White*, 208 Mich App 126, 132; 527 NW2d 34 (1994), quoting *United States v Lott*, 854 F2d 244, 250 (CA 7, 1988). Here, defendant does not dispute that the plants would have become moldy if stored without first being dried. We reject defendant's contention that the police's action, which was taken in good faith to preserve perishable evidence, constitutes tampering. We further reject defendant's suggestion that the police should have tended the plants until trial; the police are not gardeners, and in any case, growing marijuana is statutorily prohibited. See MCL 333.7401(2)(d); MSA 14.15(7401)(2)(d). Because the evidence was authenticated through the testimony of Detective Doehring, see MRE 901(a), the trial court did not abuse its discretion in admitting the evidence.

With regard to the admission of the photographs of the marijuana plants, defendant has failed to clearly articulate why the trial court erred. The gist of his argument appears to be that he was somehow prejudiced because the photographs depicted live marijuana plants, while the marijuana plants that were entered into evidence had been dried. This argument has no merit. Detective Doehring testified that he took the photographs and that they were true representations of what he observed in defendant's

residence at the time of the seizure. The trial court therefore did not abuse its discretion in admitting the photographs. See MRE 901(b)(1).

III

In his final issue, defendant raises two allegations of error regarding his sentences.

A

Defendant claims that the trial court erred in imposing a maximum sentence of twice the statutory maximum when MCL 769.10; MSA 28.1082 permits only the imposition of a sentence that is one-and-a-half times the statutory maximum. However, defendant was sentenced as a repeat drug offender pursuant to MCL 333.7413(2); MSA 14.15(7413)(2), which authorizes the imposition of a maximum sentence of twice the statutory maximum. Because the judgment of sentence does not reflect that defendant was sentenced as a repeat drug offender, we remand for correction of the judgment of sentence.

B

Defendant also contends that his sentence is disproportionately harsh. A trial court's imposition of a particular sentence is reviewed on appeal for an abuse of discretion, which will be found where the sentence imposed does not reasonably reflect the seriousness of the circumstances surrounding the offense and the offender. *People v Milbourn*, 435 Mich 630, 636; 461 NW2d 1 (1990).

Whether to impose an enhanced sentence on an habitual offender is within the sentencing court's discretion. *People v Bewersdorf*, 438 Mich 55, 66; 475 NW2d 231 (1991). A trial court does not abuse its discretion in giving a sentence within the statutory limits established by the Legislature when an habitual offender's underlying felony, in the context of his previous felonies, evidences that the defendant has an inability to conform his conduct to the laws of society. *People v Hansford (After Remand)*, 454 Mich 320, 326; 562 NW2d 460 (1997). In view of defendant's extensive criminal record, the sentence is proportionate to the seriousness of the circumstances surrounding the offense and the offender, and the trial court therefore did not abuse its discretion in sentencing him. See *Milbourn, supra*.

Defendant's convictions and sentences are affirmed. However, we remand for the ministerial task of correcting the judgment of sentence. We do not retain jurisdiction.

/s/ Gary R. McDonald
/s/ Michael J. Kelly
/s/ Mark J. Cavanagh