

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

TRUDELL CHENIRE WRIGHT,

Defendant-Appellant.

UNPUBLISHED

August 6, 1999

No. 211375

Saginaw Circuit Court

LC No. 94-009267

Before: Sawyer, P.J., and Holbrook, Jr., and W. E. Collette,* JJ.

MEMORANDUM.

Defendant pleaded guilty to delivery of less than fifty grams of cocaine, MCL 333.7401(2)(a)(iv); MSA 14.15(7401)(2)(a)(iv), and pleaded no contest to felonious assault, MCL 750.82; MSA 28.277. The trial court originally imposed concurrent prison terms of eight to twenty years and one to four years, respectively, but later amended the judgment of sentence to provide for the sentences to run consecutively, as mandated by MCL 333.7401(3); MSA 14.15(7401)(3). This Court affirmed defendant's sentences on appeal, *People v Wright*, unpublished opinion per curiam of the Court of Appeals, issued January 17, 1997 (Docket No. 181159) (hereinafter "*Wright I*"). Subsequently, in lieu of granting leave and citing *People v Miles*, 454 Mich 90; 559 NW2d 299 (1997) and *People v Thomas*, 223 Mich App 9; 566 NW2d 13 (1997), our Supreme Court remanded the case for resentencing. *People v Wright*, 456 Mich 921 (1998). On resentencing, the trial court again imposed consecutive prison terms of eight to twenty years and one to four years. Defendant now appeals by right, and we again affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant first objects to the scoring of ten points under Offense Variable (OV) 8 of the sentencing guidelines for offenses that are part of a pattern of criminal activity over a period of time from which the defendant derived a substantial portion of his or her income. However, as noted in this Court's previous opinion, the trial court's findings under this variable are "easily supported by defendant's own version of the incident included in the PSIR." *Wright I, supra* at 2. Cf. *People v*

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

Haake, 217 Mich App 434, 436; 553 NW2d 15 (1996). Defendant next objects to the scoring of five points under OV 25 for contemporaneous criminal acts, but this issue has not been preserved for review, and any error in the scoring of OV25 would be harmless in any event, since defendant's guideline sentence range remains the same with a score of zero points under OV 25. *People v Jarvi*, 216 Mich App 161, 164; 548 NW2d 676 (1996). Finally, defendant challenges the proportionality of his sentences, but as we determined in our previous opinion, defendant has not overcome the presumption of proportionality of his sentences within the guidelines' range of twenty-four to ninety-six months. Moreover, the trial court was not obliged to consider the cumulative effect of mandatory consecutive or concurrent sentencing, i.e., defendant's "total" sentence, when setting those sentences. *Miles, supra* at 95.

Affirmed.

/s/ David H. Sawyer

/s/ Donald E. Holbrook, Jr.

/s/ William E. Collette