

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

KEITH SPENCER,

Defendant-Appellant.

UNPUBLISHED

April 25, 2000

No. 212128

Wayne Circuit Court

Criminal Division

LC No. 97-009509

Before: Collins, P.J., and Neff and Smolenski, JJ.

MEMORANDUM.

Defendant appeals as of right his conviction after a bench trial for carrying a concealed weapon, MCL 750.227; MSA 28.424. We affirm.

On November 3, 1997, police officers responding to a call regarding a person with a weapon saw defendant take a pistol out of his jacket, place it in the trunk of a car, close the trunk and take off running. One officer testified, and on defendant's request the trial was adjourned to produce the second officer. The testimony of the officers was consistent, and defendant was found guilty as charged.

On appeal, defendant argues that the court was biased because it questioned whether the production of the second officer was necessary, if his testimony would be the same as the first officer. Defense counsel stated that the second officer may have had a different point of view, and the court adjourned the trial to obtain the testimony of the second witness. The trial court's questions did not show bias, and only showed that the court was performing its duty to control the proceedings and limit the introduction of evidence to relevant matters. MCL 768.29; MSA 28.1052.

Defendant also asserts that his sentence is disproportionate and based on inaccurate information where the court remarked that defendant had violated every probation he had been on. A sentence within the guidelines range is presumed proportionate, and defendant bears the burden of showing unusual circumstances that would establish that the sentence is disproportionate. *People v Broden*, 428 Mich 343; 408 NW2d 789 (1987); *People v Daniel*, 207 Mich App 47, 54; 523 NW2d 830 (1994). Defendant has not identified any unusual circumstances that would show that his sentence was disproportionate. Defendant was on probation at the time of the instant offense, and he violated that

probation. Defendant failed to raise a challenge to inaccurate information in the trial court, and that claim is waived. *People v Baldwin*, 130 Mich App 653, 655; 344 NW2d 37 (1983).

Affirmed.

/s/ Jeffrey G. Collins

/s/ Janet T. Neff

/s/ Michael R. Smolenski