

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

HOWARD DEMARATIUS WHITE,

Defendant-Appellant.

UNPUBLISHED

July 1, 2010

No. 291228

Wayne Circuit Court

LC No. 08-009222-01 FH

Before: METER, P.J., and SERVITTO and BECKERING, JJ.

PER CURIAM.

Defendant appeals as of right his sentence of two to 20 years' imprisonment, imposed as a result of his jury conviction of one count of possession with intent to deliver less than 50 grams of cocaine, MCL 333.7401(2)(a)(iv). Because defendant's minimum term was within the sentencing guidelines, and there is no assertion that the guidelines were misscored or that the trial court relied on inaccurate information in imposing sentence, we affirm.

According to trial testimony, the Detroit Police Department set up surveillance of a vacant house suspected of being a location for drug trafficking. A surveillance officer observed defendant engage in what the officer believed to be two narcotics transactions within a few minutes of each other. When back-up officers arrived, defendant was detained, and a search of his person revealed \$34 in dollar bills, as well as both marijuana and cocaine. Defendant, however, maintained that he was simply standing outside the vacant house with his dog when the police arrived and arrested him. Defendant admitted that he had marijuana in his pocket when he was arrested, but denied that he had cocaine on his person. The jury ultimately found defendant guilty of possession with intent to deliver less than 50 grams of cocaine, and guilty of possession of marijuana, MCL 333.7403(2)(d).

At sentencing, the parties agreed that the sentencing guidelines recommended a minimum term range of zero to 34 months, as adjusted for defendant's status as a fourth habitual offender, MCL 769.12. Defense counsel noted that the guideline range placed defendant in a straddle cell, and that the trial court could impose an intermediate sanction, such as a jail term. Defendant sought leniency on the grounds that he had support from the community, he was employed, and he had children who looked to him for guidance. The trial court noted that defendant was on

probation at the time he committed the instant offense, and sentenced defendant to two to 20 years in prison for possession with intent to deliver cocaine, with credit for 16 days, and to 16 days in jail for possession of marijuana, with credit for 16 days.¹

On appeal, defendant argues that his minimum term of two years is disproportionate to his circumstances and those of the offense, notwithstanding the fact that the sentence was within the guidelines, and that the trial court should have imposed an intermediate sanction, such as a jail term. We disagree.

We review the interpretation of the guidelines de novo as a question of law. *People v Endres*, 269 Mich App 414, 417; 711 NW2d 398 (2006). Pursuant to MCL 769.34(10), if a minimum term is within the sentencing guidelines, we must affirm the sentence and may not remand for resentencing absent an error in the scoring of the guidelines or the trial court's reliance on inaccurate information in imposing sentence. *People v Kimble*, 470 Mich 305, 309; 684 NW2d 669 (2004). A sentence that falls within the guidelines is presumptively proportionate. *People v Powell*, 278 Mich App 318, 323; 750 NW2d 607 (2008).

The sentencing guidelines, as adjusted for defendant's status as a fourth habitual offender, recommended a minimum term range of zero to 34 months for defendant's conviction of possession with intent to deliver less than 50 grams of cocaine. The trial court's sentencing decision was thus governed by MCL 769.34(4)(c). That statute provides:

(4) Intermediate sanctions shall be imposed under this chapter as follows:

* * *

(c) If the upper limit of the recommended minimum sentence exceeds 18 months and the lower limit of the recommended minimum sentence is 12 months or less, the court shall sentence the offender as follows absent a departure:

(i) To imprisonment with a minimum term within that range.

(ii) To an intermediate sanction that may include a term of imprisonment of not more than 12 months.

Under this statute, the trial court has the discretion to impose either a term of imprisonment within the guidelines, or an intermediate sanction. See *People v Harper*, 479 Mich 599, 617; 739 NW2d 523 (2007).

Defendant does not dispute that his minimum term of two years was within the guidelines, and does not argue that the guidelines were misscored or that the trial court relied on inaccurate information in imposing sentence. Essentially, defendant argues that because he was

¹ Defendant does not challenge the sentence imposed on his conviction of possession of marijuana.

deemed to be of minimal risk to the community and amenable to rehabilitation, the trial court abused its discretion by failing to impose a proportionate sentence, i.e., an intermediate sanction.

We conclude that the trial court did not abuse its discretion by sentencing defendant to prison rather than to an intermediate sanction. Defendant had an extensive prior record, including a conviction of assault with intent to do great bodily harm less than murder, MCL 750.84, and at the time he was sentenced, he was awaiting trial on several pending charges, including second-degree home invasion, MCL 750.110a(3). Defendant had demonstrated an inability to conform his conduct to the requirements of the law.

Defendant's minimum term was within the guidelines, and defendant does not argue that the guidelines were misscored or that the trial court relied on inaccurate information in imposing sentence. Under the circumstances, we are required to affirm the sentence. MCL 769.34(10); *Kimble*, 470 Mich at 309.

Affirmed.

/s/ Patrick M. Meter
/s/ Deborah A. Servitto
/s/ Jane M. Beckering