

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DESHAWN MAURICE HOWARD,

Defendant-Appellant.

UNPUBLISHED

May 6, 1997

No. 191423

Genesee Circuit Court

LC No. 91-045457-FH

AFTER REMAND

Before: Wahls, P.J., and Hood and Jansen, JJ.

MEMORANDUM.

Defendant pleaded guilty to possession with intent to deliver less than fifty grams of cocaine, MCL 333.7401(2)(a)(iv); MSA 14.15(7401)(2)(a)(iv). The trial court initially sentenced defendant to a term of five and a half to forty years' imprisonment. This Court remanded for resentencing. *People v Howard*, unpublished opinion per curiam of the Court of Appeals, issued 7/11/95 (Docket No. 160694). On remand, the trial court sentenced defendant to a term of five to twenty years' imprisonment. Defendant appeals as of right. We affirm.

Defendant argues that the trial court erred in increasing the scoring of OV 16 at resentencing. We disagree. This Court recently held that a trial court may assess more points under a scoring variable even if the prosecutor did not object to the scoring at the original sentencing. *People v Lyons (After Remand)*, ___ Mich App ___, ___ NW2d ___ (Docket No. 194997, issued 3/14/97). Accordingly, this issue has no merit. See also *People v Abbett*, 443 Mich 863; 503 NW2d 656 (1993).

Defendant also argues that his sentence was disproportionate. We disagree. Defendant's sentence was within the guidelines and is presumed proportionate. *People v Cotton*, 209 Mich App 82, 85; 530 NW2d 495 (1995). Defendant has not presented such unusual circumstances as to overcome the presumption of proportionality. See *id.* After reviewing the record, we believe that defendant's sentence was proportionate to the seriousness of the matter. *People v Houston*, 448 Mich 312, 319; 532 NW2d 508 (1995).

Affirmed.

/s/ Myron H. Wahls

/s/ Harold Hood

/s/ Kathleen Jansen