

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

HENRY ROBERT STUBBS,

Defendant-Appellee.

UNPUBLISHED

November 14, 1997

No. 197664

Charlevoix Circuit Court

LC No. 96-011009-FH

Before: Saad, P.J., and Holbrook, Jr., and Doctoroff, JJ.

PER CURIAM.

Defendant was convicted, following a bench trial, of possession with intent to deliver less than fifty grams of a controlled substance. MCL 333.7401(a)(2)(iv); MSA 14.15(7401(2)(a)(iv). He was sentenced to serve 2 ½ to 20 years in prison. He appeals as of right and we affirm.

Defendant asserts in his brief on appeal that his conviction must be overturned because the trial court's findings of fact were "simply without any objective support, entirely without any verification, and amount to adopting the bald allegations of an admitted drug using felon." Defendant claims that the confidential informant framed defendant by falsifying evidence and that the informant's testimony was not credible. In a criminal bench trial, "[t]he court must find the facts specially, state separately its conclusions of law, and direct entry of the appropriate judgment." MCR 6.403. This Court will uphold a trial court's findings and conclusions in a bench trial where it is clear from the record that the court was aware of the factual issues and correctly applied the law. *People v Kemp*, 202 Mich App 318, 322; 508 NW2d 184 (1993).

In *People v Atkins*, 397 Mich 163, 172; 243 NW2d 292 (1976), overruled in part on other grounds in *People v Woods*, 416 Mich 581 (1982), our Supreme Court held:

Defendant urges this Court to follow the Illinois rule that the uncorroborated testimony of an addict-informer is insufficient as a matter of law to make a jury-submissible case, and that his motion to dismiss at the close of the people's proofs should have been granted. Most recently, this Court has stated that it 'has steadfastly supported the right of the trier of fact, particularly the jury, to believe or disbelieve, in whole or in part, any

of the evidence presented.’ We hold that the credibility of an addict-informer, like that of an accomplice, is a jury question, and that the jury may convict on such testimony alone.

We find no reason that this holding should not apply in bench trials, as well as jury trials.

Here, the trial court found the informant’s testimony to be generally credible, despite the facts that a deal existed between the informant and the police whereby the informant would make drug buys in exchange for the dismissal of pending charges and that the informant had two prior theft convictions. In essence, defendant asks this Court to review the credibility of a witness, a function that is best left to the trier of fact. See MCR 2.613(C). We note that, in rejecting defendant’s theories that the cocaine had been planted by the informant, the trial court specifically stated that the police monitored the informant while en route to and from defendant’s house, leaving the informant no opportunity to plant the cocaine. Moreover, the court found that the informant probably could not have planted the cocaine on his person or inside defendant’s house because the police searched the informant’s person and his car before and after he entered defendant’s house. Finally, based on the informant’s testimony that defendant admitted he had what the informant was looking for and that defendant exchanged a baggie of cocaine for money, the trial court could rationally conclude that defendant knowingly possessed the cocaine, and intended to deliver it to the informant. We conclude that the trial court was aware of the factual issues and correctly applied the law. *Kemp, supra*.

Defendant next argues that his sentence was disproportionate under *People v Milbourn*, 435 Mich 630, 634-635; 461 NW2d 1 (1990). A sentence within the guidelines is presumptively proportionate and valid. *People v Kennebrew*, 220 Mich App 601, 609-610; 560 NW2d 354 (1997). Even though the court corrected the scoring under one of the offense variables, the resulting score did not alter the length of the sentence set forth in the minimum recommended guidelines, and therefore there was no deviation from the guidelines. Additionally, when the trial court sentenced defendant, the court noted that the nature of the crime, selling narcotics in the community, demanded punishment. Accordingly, we find no abuse of discretion by the trial court in imposing sentence.

Affirmed.

/s/ Henry W. Saad

/s/ Donald E. Holbrook, Jr.

/s/ Martin M. Doctoroff