

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

EDWARD ALBERT CAMPBELL, JR.,

Defendant-Appellant.

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UNPUBLISHED

December 15, 2000

No. 208220

Genesee Circuit Court

LC No. 97-000989 FH

Before: Bandstra, C.J., and Gage and Wilder, JJ.

PER CURIAM.

After a jury trial, defendant was convicted of possession of less than twenty-five grams of cocaine, MCL 333.7403(2)(a)(v); MSA 14.15(7403)(2)(a)(v), and possession of marijuana, MCL 333.7403(2)(d); MSA 14.15(7403)(2)(d). The trial court sentenced defendant to concurrent terms of two to four years' imprisonment for the cocaine possession conviction and twelve months for the marijuana possession conviction. Defendant appeals as of right. We affirm.

Defendant first contends that insufficient evidence supported his cocaine and marijuana possession convictions. In reviewing the sufficiency of the evidence, this Court must view the evidence in the light most favorable to the prosecution and determine whether a rational trier of fact could find that the essential elements of the crime were proved beyond a reasonable doubt. *People v Godbold*, 230 Mich App 508, 522; 585 NW2d 13 (1998).

A police officer testified at trial that when he apprehended defendant, a plastic bag containing suspected marijuana fell out of one of defendant's hands, while defendant's other hand held two clear plastic bags containing suspected pieces of crack cocaine. The parties stipulated that a police laboratory report determined the substances defendant possessed to be cocaine and marijuana.<sup>1</sup> Furthermore, defendant himself admitted at trial that he possessed both

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<sup>1</sup> Defendant premises his insufficiency of the evidence argument on the prosecutor's statement prior to jury selection that at trial "there would be a stipulation that . . . the evidence involved was . . . tested and didn't show the presence of marijuana as well as cocaine . . . and I would ask that the laboratory report be able to be used as evidence with that stipulation." A review of the available record demonstrates that the prosecutor initially misstated the test results. In response to the prosecutor's pretrial indication of the stipulation, defense counsel stated, "We're not

cocaine and marijuana. We conclude that this evidence supported the jury's determinations of defendant's guilt beyond a reasonable doubt. *Godbold, supra*; *People v Hellenthal*, 186 Mich App 484, 486-487; 465 NW2d 329 (1990).

Defendant next argues that he was denied the effective assistance of counsel. Defendant asserts that in light of the alleged stipulation that the substances defendant possessed were not cocaine or marijuana, defense counsel should have moved for dismissal of the charges and counseled defendant not to testify that he possessed cocaine and marijuana for his personal use. Defendant further claims that defense counsel should have objected to the trial court's misstatement that the parties stipulated the laboratory report indicated the presence of cocaine and marijuana. Defendant's assertions of error again depend on his mischaracterization of the parties' stipulation. See note 1, *supra*. Because the parties stipulated that laboratory results identified cocaine and marijuana, defense counsel did not render ineffective assistance by failing to move to dismiss the charges or failing to object to the trial court's correct description of the stipulation. *People v Mitchell*, 454 Mich 145, 156; 560 NW2d 600 (1997). With respect to defense counsel's decision to offer defendant's testimony that he intended to use the drugs he possessed, we agree with defendant that "[i]f the tests had been positive for controlled substances, the Defendant's testimony could have been the basis for sound trial strategy." *Mitchell, supra* (noting that defendant must overcome the presumption that under the circumstances the challenged action might be considered sound trial strategy); *People v Rockey*, 237 Mich App 74, 76-77; 601 NW2d 887 (1999) (noting that decisions regarding whether to call or question witnesses are presumed to be matters of trial strategy that this court will not second guess). We find no ineffective assistance of counsel.

Lastly, defendant claims that the trial court abused its discretion in departing from the sentencing guidelines and imposing a two- to four-year imprisonment term. We review for an abuse of discretion the trial court's imposition of sentence. An abuse of discretion occurs when the trial court violates the proportionality principle, which demands that the sentence be proportionate to the seriousness of the circumstances surrounding the offense and the offender. *People v Milbourn*, 435 Mich 630, 635-636, 654; 461 NW2d 1 (1990).

The trial court explained both at the sentencing hearing and in a written guidelines departure evaluation the reasons it found inadequate the zero to six months guidelines range. *People v Fleming*, 428 Mich 408, 426; 410 NW2d 266 (1987). The trial court justified its departure by explaining that a sentence within the guidelines would not permit defendant's rehabilitation or sufficiently discipline him, and would fail to protect the community. *People v*

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disputing that [defendant] had it but we're saying it was simple possession rather than possession with intent to deliver." In his opening and closing arguments, the prosecutor argued that the bags defendant possessed contained cocaine and marijuana, and that the laboratory results positively identified a controlled substance. Furthermore, the trial court informed the jury of the parties' stipulation "that the laboratory analysis done at the Michigan State Police Crime Laboratory of the substances seized from the defendant have resulted in a positive confirmation of cocaine and marijuana," to which stipulation neither party objected. We additionally note that the transcript of defendant's preliminary examination likewise indicates that the crime laboratory tests detected cocaine and marijuana.

*Ross*, 145 Mich App 483, 495; 378 NW2d 517 (1985) (noting that discipline and reformation of the offender and the protection of society represent proper sentencing objectives). The trial court mentioned defendant's unemployment, his decision to drop out of high school at his girlfriend's request and failure to resume his education, and his daily use of drugs and alcohol. The record reflected that defendant denied that his drug and alcohol use represented a substance abuse problem. While defendant had no prior felony convictions or misdemeanors, defendant was on probation pursuant to the Holmes Youthful Trainee Act (HYTA), MCL 762.11 *et seq.*; MSA 28.853(11) *et seq.*, for breaking and entering a vehicle and larceny from a vehicle. An Oakland County bench warrant for defendant's arrest had been issued because of defendant's failures in several respects to comply with the terms of his probation. At the time of sentencing, defendant also had a pending charge of assault with intent to do great bodily harm less than murder. The presentence information report opined that defendant accepted little responsibility for his instant convictions.

In light of defendant's other criminal involvement, substance abuse problem and apparent failed rehabilitation under the HYTA, we cannot conclude that the trial court abused its discretion in determining that a departure from the guidelines was warranted to better achieve defendant's punishment and rehabilitation and to better protect society. *People v Harris*, 190 Mich App 652, 668-669; 476 NW2d 767 (1991); *Ross, supra*. We find the two to four-year term imposed proportionate to the seriousness of the circumstances surrounding defendant and the instant offenses. *Milbourn, supra* at 635-636; *People v Kreger*, 214 Mich App 549, 553-554; 543 NW2d 55 (1995) (rejecting the proposition that a sentence's proportionality depends on the magnitude of the trial court's departure from the sentencing guidelines).

Affirmed.

/s/ Richard A. Bandstra

/s/ Hilda R. Gage

/s/ Kurtis T. Wilder