STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JOHNNY PIERRE HARRIS,

Defendant-Appellant.

UNPUBLISHED
November 16, 2004

No. 250802
Monroe Circuit Court
LC No. 02-032338-FH

Before: Cavanagh, P.J., and Kelly and H. Hood*, JJ.

PER CURIAM.

Defendant appeals as of right his jury conviction of possession with intent to deliver less than 50 grams of cocaine, MCL 333.7401(2)(a)(iv), for which he was sentenced as a fourth habitual offender, MCL 769.12. We affirm.

Defendant first argues that the evidence seized as a result of an administrative search of his residence should have been suppressed because his parole officer ordered the search without reasonable suspicion. We disagree. This Court reviews a trial court's decision regarding the admissibility of evidence for an abuse of discretion. *People v Sabin (After Remand)*, 463 Mich 43, 60, 67; 614 NW2d 888 (2000).

It is undisputed that defendant was on parole related to his fifth delivery of cocaine conviction at the time the administrative search was conducted. Pursuant to AACS R 791.7735(2), a parole agent may conduct a search of a parolee's person or property when there is reasonable cause to believe that a violation of parole exists. See, also, *People v Woods*, 211 Mich App 314, 317-319; 535 NW2d 259 (1995). Here, defendant's parole agent received a call on January 29, 2002, from an anonymous person who reported that defendant, who was referred to by name, was selling drugs. On February 4, 2002, the parole agent received a second call from the brother of one of the agent's other parolees who advised the agent that his brother was using drugs again and was seen getting into a vehicle with a particular license plate number to buy drugs. A LIEN check revealed that the vehicle with that license plate number was registered to defendant. The parole agent then contacted the Michigan State Police and reported the information he had regarding defendant. He was advised by the State Police that they also had information that led them to believe that defendant was selling drugs. In fact, on January 29, 2002, the State Police conducted a successful controlled buy of cocaine at defendant's house and

* Former Court of Appeals judge, sitting on the Court of Appeals by assignment.

from defendant through a confidential informant. Thereafter, the parole agent requested assistance in conducting an administrative search on the ground that he had reasonable cause to believe that defendant violated his parole. The search was conducted on February 7, 2002, and crack cocaine (found in defendant's car and house), packaging material, a lock blade knife, and a scale were recovered. In light of the facts, we agree that the parole agent had reasonable cause to believe that defendant violated the conditions of his parole by selling drugs; therefore, the motion to suppress the evidence recovered during the administrative search was properly denied.

Next, defendant argues that offense variable two (OV 2) was incorrectly scored at five points because he did not possess a weapon during the commission of the crime. We disagree. A sentencing court has discretion in determining the number of points to be scored, provided that evidence of record adequately supports a particular score. *People v Leversee*, 243 Mich App 337, 349; 622 NW2d 325 (2000). Such scoring decisions will be upheld on appeal if there is any supporting evidence. *People v Elliott*, 215 Mich App 259, 260; 544 NW2d 748 (1996); *People v Hoffman*, 205 Mich App 1, 24; 518 NW2d 817 (1994).

MCL 777.32(1)(d) provides for a five point score where the "offender possessed or used a pistol, rifle, shotgun, or knife or other cutting or stabbing weapon." It is undisputed that during the search of defendant's residence a lock blade knife was recovered on top of a stove that cocaine was being stored inside. However, defendant contends that he did not "possess" the knife at the time the crime, possessing cocaine, was committed since the knife was in the house when he was arrested outside and thus it did not have "lethal potential." See MCL 777.32(1). But, our Supreme Court has explained that the critical inquiry with respect to a "possession" analysis is whether defendant possessed the weapon during his possession of the drug, not whether he did so at the time of his arrest. See *People v Burgenmeyer*, 461 Mich 431, 439-440; 606 NW2d 645 (2000). "A drug-possession offense can take place over an extended period, during which an offender is variously in proximity to the firearm and at a distance from it." *Id*. at 439. We find *Burgenmeyer* persuasive although it involved an issue whether a defendant could be convicted of felony firearm when the firearm was located in his house near the cocaine but he was arrested two blocks away from his house. Here, the drugs and the weapons were close enough to each other for the sentencing judge to conclude that defendant possessed both at the same time and that the knife had lethal potential during the commission of the crime. See *id*. at 440.

Affirmed.

/s/ Mark J. Cavanagh
/s/ Kirsten Frank Kelly
/s/ Harold Hood