

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

LAWRENCE WILLIAM JENKINS,

Defendant-Appellant.

UNPUBLISHED

October 22, 2009

No. 287854

Wayne Circuit Court

LC No. 08-004156-FH

Before: Fort Hood, P.J., and Sawyer and Donofrio, JJ.

PER CURIAM.

Defendant appeals as of right from the sentences imposed after his bench-trial convictions of felon in possession of a firearm, MCL 750.224f; possession of less than 25 grams of cocaine, MCL 333.7403(2)(a)(v); possession of a firearm during the commission of a firearm (felony-firearm), MCL 750.227b, and possession of marijuana, MCL 333.7403(2)(d). We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Prior to sentencing, the following exchange occurred between the trial court and defendant:

The Court. All right. Mr. Jenkins is there anything you'd like to say, sir?

Defendant. Yes, Your Honor, my account someone has tookin' (sic) \$10.00 from me, I need that back and I'd like to have—

The Court. I'm sorry, who took \$10.00 from you?

Defendant. The store line over at the County Jail.

The Court. Oh, the commissary over there at the jail?

Defendant. And I'd like to have the transcript.

The Court. Oh, sure. Oh, absolutely. Yeah, we'll get that for you. That'll be sent to your attorney.

Defendant. And a rush on wherever you're sending me to.

The Court. Pardon me.

Defendant. A rush on wherever you send me to.

The Court. All right. I'm sure Deputy Bennis will get you on the express train.

The trial court then sentenced defendant.

On appeal, defendant argues that the trial court erred during sentencing because it did not afford defendant a proper opportunity to allocute. He also argues that the trial court's response to defendant's request indicates a predisposition by the trial court to hasten to incarcerate defendant rather than considering the statutory sentencing guidelines solely in sentencing him.

We find defendant's claim that he was not provided an opportunity to allocute to be without merit. MCR 6.425(E)(1)(c) provides that a defendant and his attorney be afforded an opportunity to speak in mitigation of the sentence. *People v Petty*, 469 Mich 108, 119; 665 NW2d 443 (2003). Defendant was afforded such an opportunity here, but he chose to raise unrelated concerns, rather than to provide the trial court with a possible rationale for sentencing him below the guidelines to probation.

If a minimum sentence is within the appropriate sentencing guidelines range, we must affirm the sentence and may not remand for resentencing absent an error in the scoring of the guidelines or inaccurate information relied on by the trial court in determining the sentence. MCL 769.34(10); *People v Kimble*, 470 Mich 305, 309; 684 NW2d 669 (2004). Defendant's minimum guidelines range for his felon in possession conviction was nine to 23 months. MCL 777.66. This range placed defendant in a "straddle cell" where the trial court had the option to impose (1) a term of imprisonment with a minimum term within that range, or (2) an intermediate sanction. MCL 769.34(4)(c). Defendant was sentenced at the bottom of this sentencing range. Defendant did not argue below, and does not argue on appeal, that the guidelines were scored incorrectly, or that the trial court relied on inaccurate information. We thus affirm defendant's sentences.¹

Affirmed.

/s/ Karen M. Fort Hood

/s/ David H. Sawyer

/s/ Pat M. Donofrio

¹ Defendant does not specifically argue that the trial court was biased against him. However, to the extent his argument tangentially raises such a claim, we find it without merit. We read the exchange as a request by defendant to be removed from the jail environment, and the trial court's response a somewhat unusual acknowledgement of that request. It was not clearly a statement that the trial court intended to sentence defendant to prison rather than to probation because of defendant's remarks rather than due to its review of the circumstances of defendant and the offenses he committed here.