STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ROBERT MONROE ARWOOD,

Defendant-Appellant.

UNPUBLISHED
February 28, 1997

No. 188069
Genesee Circuit Court
LC No. 86-36347-FH

Before: Hood, P.J., and Saad and T.S. Eveland,* JJ.

PER CURIAM.

Defendant pleaded guilty to possession with intent to deliver cocaine, 225-650 grams, MCL 333.7401(2)(a)(ii); MSA 14.15(7401)(2)(a)(ii), an offense which, by statute carries a term of imprisonment of "not less than 20 or more than 30 years." Although defendant was sentenced shortly after his plea, he has twice previously appealed his sentence, and the matter has been remanded twice for resentencing. At the second resentencing, defendant was sentenced to ten to twenty years on the 225-650 grams offense. That sentence was imposed *consecutively* to another sentence of three to ten years in prison, which had been imposed by a different judge following defendant's plea of guilty to an unrelated charge (delivery of cocaine, less than 50 grams, MCL 333.7401(2)(a)(iv); MSA 14.15(7401)(2)(a)(iv)). Defendant now challenges, once again, the sentence imposed for the 225-650 grams offense.

Defendant's basic contention is that the 225-650 gram sentence should be served *concurrently* rather than *consecutively* to the 50 gram sentence. However, all of defendant's arguments premised upon this theory ignore the fact that, at all relevant times, MCL 333.7401(3); MSA 14.15(7401)(3) *required* that the sentence imposed for a 225-650 gram conviction must "be imposed to run consecutively with any other term of imprisonment imposed for the commission of another felony."

Defendant argues that he was denied due process because, since the prosecution did not appeal from the first concurrent sentence, the prosecution "waived" the concurrent sentence issue, and

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

therefore defendant should not have been sentenced by the court to a concurrent sentence. However, the only case which defendant cites in support of this proposition (*People v Alvarado*, 192 Mich App 718, 723; 481 NW2d 822 (1992)) is inapposite. There is nothing unconstitutional about defendant's consecutive sentences.

Defendant also claims, in essence, that the two sentences should not be served consecutively, because if his sentences had been imposed in reverse order, they would have been imposed concurrently. Even so, this fact is insufficient to require the sentencing court to ignore the plain language of MCL 333.7401(3); MSA 14.15(7401)(3). We find no merit to this assertion. See *People v Morris*, 450 Mich 316, 320; 537 NW2d 842 (1995).

Finally, defendant contends that the sentence was disproportionate and that the sentencing court erred by not sentencing defendant below the mandatory minimum sentence, in light of his behavior while in prison, his family support, and various other factors. We disagree. Defendant was involved in a large scale cocaine operation; he had sold cocaine numerous times to the undercover officer involved, and he even advised the officer how to launder drug proceeds, so as to avoid forfeiture. Defendant has both a prior felony and a prior misdemeanor conviction and a limited work history. After his arrest, defendant refused to assist the investigating agency, and he failed to appear for trial, resulting in a bond revocation. We see no abuse of discretion in the sentencing court's refusal to sentence defendant below the mandatory minimum, and we see no proportionality violation.

Affirmed.

/s/ Harold Hood
/s/ Henry William Saad
/s/ Thomas S. Eveland