STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DOUGLAS ROBERT PASCHKE,

Defendant-Appellant.

UNPUBLISHED
March 4, 1997

No. 185866
Sanilac Circuit Court
LC No. 95-4268-FH

Before: White, P.J., and Cavanagh, and J.B. Bruff,* JJ.

PER CURIAM.

Defendant pleaded guilty of possession with intent to deliver less than fifty grams of cocaine, MCL 333.7401(2)(a)(iv); MSA 14.15(7401)(2)(a)(iv), possession of LSD, MCL 333.7403(2)(c); MSA 14.15(7403)(2)(c), and possession of marihuana, MCL 333.7403(2)(d); MSA 14.15(7403)(2)(d). Defendant was sentenced to five to twenty years' imprisonment for the cocaine offense, and two concurrent terms of one year in jail for the LSD and marihuana offenses. We affirm.

Defendant first argues that he is entitled to resentencing because the trial court permitted two drug enforcement officers to address the court at sentencing although they were not "victims" within the meaning of the Crime Victim's Rights Act, MCL 780.751 *et seq*.; MSA 28.1287(751) *et seq*. Plaintiff argues that although the officers may not fit under the act's definition of "victim," defendant is not entitled to resentencing because defense counsel did not object to their statements, and because their commentary regarding the effects of drug abuse and trafficking falls under the circumstances contemplated by MCR 6.425(D)(2)(c).[1]

Contrary to defendant's argument, defense counsel did not object to the statements of Hackbarth and Gray, although defense counsel did ask that Gray "identify himself and who his employer is so that the record will reflect where this information is coming from." Gray was the Administrator of the Sanilac County Drug Task Force. Hackbarth identified himself as a federal agent with the Drug Enforcement Administration. Both asserted that drug crimes are not "victimless," as defense counsel had argued, and that defendant's crimes were very serious. These were the only persons to address the

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

court other than counsel and defendant. Defense counsel then responded, stating that Hackbarth's and Gray's statements were a "waste of time" because despite harsh treatment and long sentences, the drug problem is ten times as bad as it was ten years ago.

Although we agree with defendant that neither Gray nor Hackbarth qualify as "victims" under the Crime Victim's Rights Act and that the factors considered at sentencing should focus on the offender and the offense before the court, *People v Milbourn*, 435 Mich 630; 461 NW2d 1 (1990), defendant cites no authority other than the act to support his argument that the two statements should not have been allowed. The act does not limit who may make a statement at sentencing and, in any case, defendant and defense counsel were permitted to respond to the statements. We conclude that defendant is not entitled to resentencing on this ground.

II

Defendant next argues that he is entitled to resentencing or remand because OV 8, "Continuing Pattern of Criminal Behavior," was scored improperly.

The information in the PSIR supported the scoring of ten points. The PSIR stated that defendant had been unemployed for approximately two months at the time of his arrest, that $1,400 were found in his pocket, and that spiral notebooks were found in his vehicle which included names and dollar amounts, along with a pager. The PSIR further stated that phone numbers were noted from calls made to the pager, that several of the individuals were interviewed and that they confirmed defendant was a drug seller. The PSIR also stated that during September of 1994 an investigation into drug trafficking in Brown City led to an arrest and seizure of cocaine, and that defendant was identified as the supplier of that cocaine.

We conclude that the PSIR supported that the defendant derived a substantial portion of his income from the criminal activities involved. *People v McCracken*, 172 Mich App 94, 105; 431 NW2d 840 (1988). Under these circumstances, we conclude defendant is not entitled to resentencing.

III

Defendant last argues that the trial court improperly considered defendant's offense to be more serious in Sanilac County than elsewhere and that it thereby implied what amounts to a "local policy," without regard to individualized sentencing.

In imposing sentence the trial court stated:

> Very well. Well, I think for a lack of a better terminology, the question is direct victims versus indirect victims as has been testified to by several people. And certainly in this case, Mr. Paschke has, first of all, a record dealing with illegal substances. At the present time, these substances are all illegal and against the law, and there are penalties prescribed. He has a record of violating those laws. He's been on probation in this Court for violating those kind of laws, as well as in other Courts, yet he's back here

again with—as drug charges go in Sanilac County, I would have to consider these to be quite serious charges when you're talking about delivering or intent—having enough cocaine with the intent to deliver it to other people. Now that, as charges go in this County, I think is a – is a serious crime. Maybe some other places it wouldn't look as serious, but here it does look quite serious to me. Possession of LSD. Possession of marihuana. We're talking about possession of dangerous substances. We're talking about having possession of some of them with the intent to deliver them to others. We're talking about a person here who has been convicted previously of offenses involving either the use or possession or delivery of illegal substances. The Probation Officer in his report indicates that he believes—he's worked with Mr. Paschke in the past in his probation and that he really believes that Mr. Paschke is dealing drugs for purposes of making money, making a living on it, and doesn't seem as a suitable candidate for probation. The sentencing guidelines, which I'm suppose [sic] to follow, indicate that his sentence should be between twenty-four and ninety-six months in prison. The Probation Officer is recommending a minimum of five years and a maximum of twenty years with the Michigan Department of Corrections.

Based upon the need to discipline you as a wrongdoer, to protect society from these kinds of activities, and the need to deter you and others from committing these kinds of offenses because, as I said, I think delivery of—intent to deliver cocaine and possession of LSD are certainly serious offenses and you ought to be deterred from doing them and others should be as well; being doubtful of your potential for reformation and rehabilitation based upon the fact of your past record and returning here again, it shall be the sentence of this Court . . . [Emphasis added to indicated challenged remarks.]

Considering the challenged remarks in the context of the whole of the court's remarks in imposing sentence, the court fashioned an individualized sentence and did not disregard the sentencing guidelines. *People v Catanzarite*, 211 Mich App 573, 583; 536 NW2d 570 (1995). We thus find no abuse of discretion.

Affirmed.

/s/ Helene N. White
/s/ Mark J. Cavanagh
/s/ John B. Bruff

[1] MCR 6.425(D)(2)(c) states:

(2) Sentencing Procedure. The court must sentence the defendant within a reasonably prompt time after the plea or verdict unless the court delays sentencing as provided by law. At sentencing the court, complying on the record, must:

(c) give the defendant, the defendant's lawyer, the prosecutor, and the victim an opportunity to advise the court of any circumstances they believe the court should consider in imposing sentence,