

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

CARLOS SELPH, a/k/a SHAWN ALLEN,

Defendant-Appellant.

UNPUBLISHED

April 1, 1997

No. 187025

Jackson Circuit Court

LC No. 94-070983-FH

Before: D.F. Walsh,* P.J., and R.P. Griffin** and W.P. Cynar,* JJ.

MEMORANDUM.

Defendant pleaded guilty to possession with intent to deliver less than fifty grams of a mixture containing cocaine, MCL 333.7401(2)(a)(iv); MSA 14.15(7401)(2)(a)(iv), and was sentenced to three to twenty years' imprisonment. He appeals as of right. We affirm. This case has been decided without oral argument pursuant to MCR 7.214(A).

Defendant contends that his conviction violates principles of double jeopardy because he was previously convicted in federal court of conspiracy to distribute and to possess with intent to distribute cocaine base, allegedly involving the same conduct as that from which his present conviction derives. We disagree.

The federal and state constitutions protect a person from being put in jeopardy twice for the same offense. US Const, Am V and Const 1963, art 1, § 15. However, defendant's plea in federal court to *conspiracy* to distribute and to possess with intent to distribute cocaine base does not present a double jeopardy bar to his present state court conviction because a substantive crime and a conspiracy to commit that crime are not the same for double jeopardy purposes. *People v Mezy*, 453

*Former Court of Appeals judges, sitting on the Court of Appeals by assignment pursuant to Administrative Order 1996-10.

**Former Supreme Court justice, sitting on the Court of Appeals by assignment pursuant to Administrative Order 1996-10.

Mich 269, 276; 551 NW2d 389 (1996), citing *United States v Felix*, 503 US 378, 388-389; 112 S Ct 1377; 118 L Ed 2d 25 (1992). Furthermore, the fact that an additional count of the federal indictment, alleging possession with intent to deliver cocaine base, was dismissed pursuant to defendant's plea to conspiracy is not controlling because "[j]eopardy does not attach to charges dismissed as part of a plea agreement." *Mezy, supra* at 276.

Affirmed.

/s/ Daniel F. Walsh

/s/ Robert P. Griffin

/s/ Walter P. Cynar