

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JIMMIE LEE CLARK,

Defendant-Appellant.

UNPUBLISHED

July 1, 1997

No. 189371

Recorder's Court

LC No. 95-002540 FH

Before: Cavanagh, P.J., and Doctoroff and D.A. Teeple*, JJ.

MEMORANDUM.

Defendant appeals by right his bench trial conviction for attempted possession with intent to deliver less than 25 grams of cocaine and resulting ~~2 1/2~~ 5 year sentence. This case is being decided without oral argument pursuant to MCR 7.214(E).

Defendant acknowledges that his first issue, which concerns the consecutive nature of his sentence arising from his parole status, is moot in light of *Wayne County Prosecutor v Department of Corrections*, 451 Mich 569; 548 NW2d 900 (1996). As to defendant's remaining issue, the sentence imposed by the trial court does not exceed the maximum authorized by statute. Defendant was jointly tried to the bench with his codefendant. The codefendant was convicted only of attempted simple possession of less than 25 grams of cocaine, an offense punishable, as defendant contends, by not more than 2 years imprisonment in light of MCL 750.92; MSA 28.287 and §7403(2)(a)(v) of the Public Health Code, MCL 333.7403(2)(a)(v); MSA 14.15(7403) (2)(a)(v).

Defendant, however, was convicted of attempted possession with intent to deliver less than 25 grams of cocaine. Since 25 grams of cocaine is less than 50 grams, the substantive offense is covered by §7401(2)(a)(iv) of the Public Health Code, which offense is punishable by up to 20 years imprisonment. Accordingly, under the general attempt statute, MCL 750.92; MSA 28.287, defendant's crime is punishable by a maximum of 5 years imprisonment, and his ~~2 1/2~~ 5 year sentence is therefore within the parameters fixed by law. The trial court's judgment of sentence, however, cites the wrong statute and should be corrected.

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

Affirmed. Remanded to the Recorder's Court for the City of Detroit for correction of the judgment of sentence in conformity with the foregoing opinion. We do not retain jurisdiction.

/s/ Mark J. Cavanagh

/s/ Martin M. Doctoroff

/s/ Donald A. Teeple