

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

TRACEY DEVELLE TATE,

Defendant-Appellee.

UNPUBLISHED

September 16, 1997

No. 191133

Oakland Circuit Court

LC No. 95-139538-FH

Before: Markey, P.J., and Neff and Smolenski, JJ.

MEMORANDUM.

The Oakland Prosecutor appeals by right the imposition of departure sentences of two and one-half to twenty years' imprisonment on each count, in this prosecution for delivery of cocaine over 50 but less than 225 grams, MCL 333.7401(2)(iii); MSA 14.15(7401)(2)(iii), and conspiracy to deliver that amount, MCL 750.157a; MSA 28.354(1). Defendant pleaded guilty to these charges and 2 separate charges of delivery of cocaine under 50 grams, MCL 333.7401(2)(iv); MSA 14.15(7401)(2)(iv), pursuant to a *Cobbs* bargain, *People v Cobbs*, 443 Mich 276; 505 NW2d 208 (1993), over prosecutorial objection. Defendant received the statutorily prescribed one to twenty year sentences on his convictions for delivery under 50 grams, but his two and one-half year minimum sentences for delivery over 50 grams and conspiracy are a departure from the legislatively mandated ten-year minimum sentences. MCL 333.7401(2)(a)(iii); MSA 14.15(7401)(2)(a)(iii). This appeal is being decided without oral argument pursuant to MCR 7.214(E).

In imposing departure sentences, the trial court noted defendant's lack of prior criminal record, his prior legitimate gainful employment before entering the drug trade, and, nonspecifically, defendant's age, which the presentence report reflects was three months shy of his 21st birthday on the date of sentencing. These are objective and verifiable factors for purposes of a departure sentence under §7401(4) of the Public Health Code. *People v Fields*, 448 Mich 58, 76-77; 528 NW2d 176 (1995).

However, the trial court failed to articulate or explain why these factors, individually or collectively, amount to "substantial and compelling" justification for deviating from the legislatively

prescribed sentencing regime. As this Court said in *People v Johnson (On Remand)*, 223 Mich App 170, 173-174; 566 NW2d 28 (1997):

Accordingly, we reemphasize that the simple iteration of objective and verifiable factors alone is insufficient to meet the statutory standard: the sentencing court must also specifically articulate the reasons why the factors that identifies and relies upon collectively provide “substantial and compelling” reasons to except the case from the legislatively mandated sentencing regime.

Acceptance of the plea pursuant to *People v Cobbs, supra*, neither adds to nor detracts from this requirement; rather, use of *Cobbs* in the context of mandatory sentencing simply complicates the judicial task at both the trial and appellate level. See *Johnson, supra*, n 3.

Reversed and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Jane E. Markey

/s/ Janet T. Neff

/s/ Michael R. Smolenski