

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

DESHOWN REMMONE PASHA,

Defendant-Appellee.

UNPUBLISHED

March 5, 1999

No. 206842

Wayne Circuit Court

LC No. 94-009266

Before: McDonald, P.J., and Hood and Doctoroff, JJ.

MEMORANDUM.

Plaintiff appeals defendant's sentence of one and one-half years to twenty years on his plea-based conviction of possession with intent to deliver more than 50 but less than 225 grams of cocaine, MCL 333.7401(2)(a)(iii); MSA 14.15(7401)(2)(a)(iii). We reverse and remand.

When defendant pleaded guilty to the charged offense, which carried a mandated sentence of not less than ten nor more than twenty years in prison, the court indicated that if substantial and compelling reasons could be shown, it would consider a minimum sentence not exceeding five years. *People v Cobbs*, 443 Mich 276; 505 NW2d 208 (1993). At sentencing, the court found that substantial and compelling reasons existed to depart from the mandated minimum term. Citing defendant's remorse, his family responsibilities, and his financial difficulties, the court sentenced defendant to one and one-half to twenty years in prison.

A court may depart downward from a mandated minimum term if it finds on the record that substantial and compelling reasons exist to do so. MCL 333.7401(4); MSA 14.15(7401)(4). Substantial and compelling reasons must be objective and verifiable, and can be based on pre- or post-arrest conduct. *People v Fields*, 448 Mich 58, 76-78; 528 NW2d 176 (1995). Such factors include the circumstances that mitigate the defendant's culpability, and the defendant's age, prior record, and work history. *People v Shinholster*, 196 Mich App 531, 534; 493 NW2d 502 (1992). The determination whether factors constituted substantial and compelling reasons to depart from a minimum term is reviewed for an abuse of discretion. *Fields, supra*, at 77-78.

We reverse. Remorse is not an objective and verifiable factor. Defendant's family responsibilities and financial difficulties are not the type of extraordinary circumstances on which departure is justified. *Fields, supra*, at 68. Defendant and his girlfriend sold narcotics from their home. Defendant was twenty-four years of age, had two prior convictions and was on probation when he committed the instant offense, and had a weak work history. The trial court abused its discretion by finding that substantial and compelling reasons existed under these circumstances.

Reversal does not deprive defendant of his sentence bargain made pursuant to *Cobbs, supra*. The trial court agreed to impose a minimum sentence of no more than five years if it found that substantial and compelling reasons existed to depart below the mandated minimum term. The court's finding that such reasons existed constituted an abuse of discretion.

In light of the foregoing, plaintiff's remaining issue is moot.

Reversed and remanded for imposition of the statutorily mandated ten-year minimum term. We do not retain jurisdiction.

/s/ Gary R. McDonald
/s/ Harold Hood
/s/ Martin M. Doctoroff