

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JULIO F. RODRIGUEZ,

Defendant-Appellant.

UNPUBLISHED

March 9, 1999

Nos. 195278, 202178

Oakland Circuit Court

LC No. 91-111555 FC

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

MEMORANDUM.

In these consolidated cases defendant appeals of right from his plea-based convictions of two counts of delivery of 50 to 224 grams of cocaine, MCL 333.7401(2)(a)(iii); MSA 14.15(7401)(2)(a)(iii), and conspiracy to deliver 50 to 224 grams of cocaine, MCL 750.157a; MSA 28.354(1). He was sentenced to three consecutive terms of ten to twenty years in prison. We affirm. These appeals are being decided without oral argument pursuant to MCR 7.214(E).

In pleading guilty, defendant indicated that he worked in conjunction with Sandra Sario to accomplish two deliveries of cocaine in excess of fifty grams. Subsequently, defendant moved to withdraw his pleas, arguing that the pleas were rendered involuntary by the trial court's failure to inform him that consecutive sentencing was required. The trial court denied the motion. After finding that substantial and compelling reasons to depart downward from the mandated minimum terms did not exist, the court sentenced defendant to three consecutive sentences of ten to twenty years, with credit for 1,731 days on the first sentence.

In a post-judgment motion to withdraw his pleas and for resentencing, defendant argued that an insufficient factual basis existed for the conspiracy conviction. The trial court denied the motion to withdraw the pleas, but granted resentencing. Ultimately, the court resentenced defendant to three consecutive terms of ten to twenty years in prison, with credit for 2,019 days on the first sentence.

Initially, defendant argues that he was entitled to withdraw his pleas because the trial court's failure to inform him that consecutive sentencing was mandatory rendered the pleas involuntary. We disagree. A trial court is not required to inform a defendant that consecutive sentencing applies. *People*

v Johnson, 413 Mich 487, 490; 320 NW2d 876 (1982); MCR 6.302(B)(2). Defendant was informed that his sentences could be consecutive. He was not materially misinformed as to the sentencing consequences of his pleas. The trial court did not abuse its discretion by denying the motion to withdraw the pleas. MCR 6.310(B); *People v Harris*, 224 Mich App 130, 131; 568 NW2d 149 (1997).

Next, defendant argues that his conspiracy conviction must be reversed because the trial court did not establish a sufficient factual basis. We disagree. A factual basis sufficient to support a plea exists if an inculpatory inference can be drawn from what the defendant has admitted. *People v Jones*, 190 Mich App 509, 511-512; 476 NW2d 646 (1991). A conspiracy is an agreement between two or more persons to commit an illegal act or a legal act in an illegal manner. The circumstances, acts, and conduct of the parties can establish the existence of an agreement. *People v Cotton*, 191 Mich App 377, 392-393; 478 NW2d 681 (1991). Defendant admitted that he and Sario worked in concert to arrange the deliveries to which defendant pleaded guilty. The factual basis was sufficient. *Jones, supra*.

Next, defendant argues that he is entitled to resentencing because the trial court based his sentences in part on a conviction that occurred in Cuba. We disagree. A foreign conviction can be considered at sentencing; however, such consideration is subject to a showing that the criminal justice system in which the conviction occurred provided sufficient due process safeguards. *People v Gaines*, 129 Mich App 439, 449; 341 NW2d 519 (1983). In the instant case, defendant's convictions carried statutorily mandated minimum sentences that were unaffected by the existence of defendant's foreign conviction. The trial court gave no improper consideration to defendant's Cuban conviction.

Finally, defendant argues that the trial court abused its discretion by declining to depart downward from the statutorily mandated ten-year minimum terms. We disagree. A sentencing court can depart downward from the minimum terms of the offenses of which defendant was convicted 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). These factors include circumstances that mitigate the defendant's culpability, the defendant's age, the defendant's prior record, and the defendant's work history. *People v Shinholster*, 196 Mich App 531, 534; 493 NW2d 502 (1992). Here, nothing in the record suggests that defendant was duped into participating in the transactions. He had two prior federal convictions and a weak work history. Grounds for departure exist only in exceptional cases. *Fields, supra*, at 68. No abuse of discretion occurred in this case.

Affirmed.

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