

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

GEORGE E. LAHAR, IV,

Defendant-Appellee.

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UNPUBLISHED

May 11, 1999

No. 209329

Genesee Circuit Court

LC No. 96-054255 FH

Before: Gage, P.J., and Gribbs and Hoekstra, JJ.

PER CURIAM.

Plaintiff People of the State of Michigan (Genesee County Prosecutor) appeals by leave granted the sentence imposed on defendant George E. Lahar, IV. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant pleaded guilty to delivery of more than fifty but less than two hundred twenty-five grams of cocaine, contrary to MCL 333.7401(2)(a)(iii); MSA 14.15(7401)(2)(a)(iii). While this offense carries a mandatory term of not less than ten nor more than twenty years in prison, a sentencing court has the authority to depart downward from the minimum term if it finds that substantial and compelling reasons exist to do so. MCL 333.7401(4); MSA 14.15(7401)(4).

The trial court departed downward from the minimum term, and sentenced defendant to four to twenty years in prison. The court cited various factors, including defendant's age (twenty-nine at the time of sentencing), his steady employment since high school, his family life, his lack of substance abuse history, the fact that his role in the offense was not as significant as that played by his associate, Mike Scigliano, his post-arrest cooperation and willingness to testify against Scigliano, his lack of a prior record, his good post-arrest conduct, and the fact that the cost of incarceration would be substantial.

While a trial court has the discretion to depart from a mandatory minimum sentence if it finds on the record that substantial and compelling reasons exist to do so, it should start with the presumption that the mandatory minimum term is appropriate, and should depart from it only when substantial and compelling reasons exist to do so. *People v Downey*, 183 Mich App 405, 413; 454 NW2d 235 (1990). A determination that departure is warranted must be based on objective and verifiable factors.

*People v Fields*, 448 Mich 58, 68; 528 NW2d 176 (1995). Appropriate factors for consideration include facts that mitigate the defendant's culpability, the defendant's prior record, the defendant's age, the defendant's work history, and the defendant's cooperation following arrest. Particular emphasis should be given to mitigating circumstances and cooperation. The existence or nonexistence of a factor is a factual determination that is reviewed for clear error. The determination that a factor is objective and verifiable is reviewed as a question of law. The determination that factors constitute substantial and compelling reasons to depart downward from a mandated minimum term is reviewed for an abuse of discretion. *Fields, supra*, 448 Mich at 76-78.

Plaintiff argues that the trial court clearly erred and abused its discretion by finding that substantial and compelling reasons existed to depart downward from the minimum term. We disagree, and affirm defendant's sentence. The court considered mitigating factors, including defendant's non-leadership role in the transaction and his need for mental health treatment, and defendant's efforts to cooperate after his arrest. These factors are worthy of special consideration. *Fields, supra*, at 76-77. The court gave proper consideration to such objective and verifiable factors as defendant's age, steady work history, and lack of a prior record. Plaintiff's argument that these factors cannot justify downward departure because defendant made a conscious decision to oppose the law is without merit. A finding that substantial and compelling reasons existed to depart downward from a mandated minimum term was not meant to be a threshold that would be impossible to reach. *Fields, supra*, at 70 n 5. The court concluded that the factors it considered presented a picture of a person who, save for one incident, had led a life free of crime and who, upon being arrested, acknowledged his involvement and attempted to cooperate with authorities. The court adequately articulated why it concluded that the factors it cited constituted substantial and compelling reasons to depart below the mandated minimum term. *People v Johnson (On Remand)*, 223 Mich App 170, 173-174; 566 NW2d 28 (1997).

While the trial court did not specifically consider inappropriate factors such as the sentence given to Scigliano, *People v Clark*, 185 Mich App 127, 131-132; 460 NW2d 246 (1990), or remarks made by the probation officer concerning the existence of substantial and compelling reasons to depart downward, *People v Perry*, 216 Mich App 277, 282-283; 549 NW2d 42 (1996), it did give inappropriate consideration to the factor of the cost of incarceration. The record does not indicate that the court would not have departed downward from the minimum term had it not considered this factor. Under the circumstances, a remand is not necessary. Cf. *Fields, supra*, at 80.

Affirmed.

/s/ Hilda R. Gage  
/s/ Roman S. Gribbs  
/s/ Joel P. Hoekstra