

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

REGINALD SMITH,

Defendant-Appellant.

UNPUBLISHED

September 29, 2000

No. 220897

Calhoun Circuit Court

LC No. 99-000603-FH

Before: McDonald, P.J., and Sawyer and White, JJ.

MEMORANDUM.

Defendant appeals as of right his jury conviction for delivery of less than 50 grams of cocaine, MCL 333.7401(2)(a)(iv); MSA 14.15(7401)(2)(a)(iv). Defendant was sentenced as a fourth offense habitual offender to three to twenty years' imprisonment. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant argues that the protection against double jeopardy was violated when he was prosecuted on this charge after having pleaded guilty to a city ordinance violation for loitering in a place where illegal drugs were present. The possession of cocaine charge arises out of a sale that took place on July 23, 1998, while the ordinance violation was based on a police raid of the same premises that took place the next day. The trial court denied defendant's motion to dismiss.

In *People v Stiff*, 190 Mich App 111; 475 NW2d 59 (1991), the defendant pleaded guilty to violating a city ordinance prohibiting the possession of a syringe. Approximately one month later, the defendant was charged with possession of less than 25 grams of heroin. The trial court granted defendant's motion to dismiss on double jeopardy grounds because both offenses took place at the same time. This Court reversed, finding that the district court had jurisdiction over the ordinance violation, while Detroit Recorder's Court had jurisdiction over the felony charge. The Court found that the criminal acts were not dependent on each other, and were different types of conduct subject to separate prohibitions. The subsequent prosecution was not barred by the doctrine of double jeopardy.

Following *Stiff*, the two prosecutions of defendant did not violate double jeopardy protections. Defendant was charged with an ordinance violation and a felony, which were not committed at the same time. The trial court properly denied his motion to dismiss.

Affirmed.

/s/ Gary R. McDonald

/s/ David H. Sawyer

/s/ Helene N. White