

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

CHRISTINE A. COHOON,

Defendant-Appellant.

UNPUBLISHED

January 23, 2001

No. 227950

Clinton Circuit Court

LC No. 99-006709-FH

Before: Collins, P.J., and Doctoroff and White, JJ.

PER CURIAM.

Defendant appeals by delayed leave granted her sentence of five to twenty years in prison for her plea-based conviction of conspiracy to deliver 50 grams or more but less than 225 grams of heroin, MCL 333.7401(2)(a)(iii); MSA 14.15(7401)(2)(a)(iii); MCL 750.157a; MSA 28.354(1). We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant pleaded guilty in exchange for dismissal of all remaining charges and the prosecution's agreement pursuant to *People v Killebrew*, 416 Mich 189; 330 NW2d 834 (1982), that her minimum term not exceed five years. The prosecution agreed that substantial and compelling reasons existed to depart downward from the statutorily mandated ten-year minimum term. MCL 333.7401(4); MSA 14.15(7401)(4).

At sentencing, defendant requested that the court depart further and impose a term of less than five years. She cited her employment history, her family support, and her attempt to address her substance abuse problem as reasons for a further downward departure. In addition, defendant noted that the sentencing guidelines recommended a minimum term range of twelve to thirty months. She contended that the guidelines themselves constituted a substantial and compelling reason for a further departure. The trial court found that no further downward departure was warranted, and sentenced defendant to five 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 of whether factors constituted substantial and compelling reasons to depart from a minimum term is reviewed for an abuse of discretion. *Fields, supra*, 77-78.

Defendant argues that she is entitled to resentencing for the reason that her minimum term of five years' is disproportionate to her circumstances and to those of the offense. *People v Milbourn*, 435 Mich 630, 636; 461 NW2d 1 (1990). She asserts that the sentencing guidelines, which recommended a minimum term range of twelve to thirty months, constituted an objective and verifiable factor that warranted a further downward departure.

We disagree and affirm defendant's sentence. The offense to which defendant pleaded guilty, conspiracy to deliver 50 to 225 grams of heroin, carried a statutorily mandated minimum term of ten years in prison. MCL 333.7401(2)(a)(iii); MSA 14.15(7401)(2)(a)(iii); MCL 750.157a(a); MSA 28.354(1)(a). The trial court agreed that substantial and compelling reasons existed to depart downward, and imposed a minimum term of five years. Those reasons included defendant's extensive cooperation with law enforcement authorities, her work history, her family support, and her documented efforts to deal with her substance abuse problem. Defendant's assertion that the sentencing guidelines provided support for a further downward departure is without merit. Defendant's offense was committed prior to January 1, 1999; therefore, the statutory sentencing guidelines were inapplicable. MCL 769.34(1); MSA 28.1097(3.4)(1). The judicial sentencing guidelines in effect at the time did not cover the offense of conspiracy to which defendant pleaded guilty. Application of guidelines by analogy is improper. *People v Laube*, 155 Mich App 415, 417; 399 NW2d 545 (1986). Furthermore, by pleading guilty with knowledge of the five-year sentence via prosecutorial recommendation, defendant demonstrated her agreement that the sentence was proportionate. *People v Cobbs*, 443 Mich 276, 285; 505 NW2d 208 (1993). No further downward departure was warranted.

Affirmed.

/s/ Jeffrey G. Collins
/s/ Martin M. Doctoroff
/s/ Helene N. White