STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED January 26, 2001
v	No. 219281 Wayne Circuit Court
MICHAEL POPE, Defendant-Appellant.	LC No. 98-008814

Before: Saad, P.J., and Griffin and R.B. Burns,* JJ.

MEMORANDUM.

After a bench trial, the court convicted defendant of a crime identified by statute as possession with intent to deliver less than fifty grams of cocaine, MCL 333.7401(2)(a)(iv); MSA 14.15(7401)(2)(a)(iv). The court sentenced defendant to lifetime probation and defendant appeals as of right. We affirm defendant's conviction, but remand for correction of the trial court's written orders and defendant's presentence report.

Defendant argues that he was convicted of a nonexistent crime, "possession with intent to deliver cocaine less than twenty-five grams." The conviction order identifies the crime by statute and by the correct description, "possession with intent to deliver less than fifty grams," but includes a handwritten note identifying the amount as "less than twenty-five grams." In addition, the order of probation lists only the incorrect description.

Defendant was charged with possession with intent to deliver less than fifty grams of cocaine. The record is clear that the intent of the trial court and the understanding of the parties was that defendant was convicted as charged. Indeed, defendant expressly agreed at sentencing that he was convicted of the crime charged, involving fifty grams of cocaine. The trial court's error was most likely due to the similarity between the charged statute, which has as a minimum weight fifty grams and the simple possession statute, which has as a minimum weight twenty-five grams. The main question at trial was whether defendant would be found guilty of simple possession or possession with intent to deliver. The actual weight of the substance recovered was well below either minimum and had been stipulated by both parties.

* Former Court of Appeals judge, sitting on the Court of Appeals by assignment.

This is not, as defendant contends, a case where the trial court "invented" a crime because the evidence was insufficient to support the charge. See *People v Banks*, 51 Mich App 685, 687; 216 NW2d 461 (1974) (trial court charged jury to include "attempted felonious assault" as a possible crime); *Wayne Co Prosecutor v Detroit Recorder's Court Judge*, 177 Mich App 762, 763, 764-765 n 1; 442 NW2d 771 (1989) (trial court convicted the defendant of "attempted delivery" of cocaine, asserting it was exercising discretion in creating the crime). Rather, the record reflects that the trial court simply made a mistaken word choice. This wording error did not evidence a misunderstanding of the relevant issues by the trial court or a fabrication of a nonexistent crime. Moreover, nothing in the record suggests the error confused the parties as to the charges at issue. Accordingly, defendant suffered no prejudice as a result of the error. However, because defendant's presentence report and the conviction and probation orders contain the erroneous reference to "less than twenty-five grams," we remand this case to the trial court to correct the errors.

Because the conviction is proper, there is no question that defendant's sentence of lifetime probation is appropriate because the statute expressly provides for lifetime probation, and defendant expressly requested this sentence.

Affirmed and remanded for corrections consistent with this opinion. We do not retain jurisdiction.

/s/ Henry William Saad
/s/ Richard Allen Griffin
/s/ Robert B. Burns