

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

KEONTA MUHAMMAD BARTON,

Defendant-Appellee.

UNPUBLISHED

February 2, 2001

No. 226416

Oakland Circuit Court

LC No. 99-164576-FH

Before: Sawyer, P.J., and Jansen and Gage, JJ.

PER CURIAM.

The prosecution appeals by leave granted from a judgment of sentence filed on January 28, 2000. Defendant pleaded guilty to possession with intent to deliver 50 grams or more, but less than 225 grams of cocaine, MCL 333.7401(2)(a)(iii); MSA 15.14(7401)(2)(a)(iii), and was thereafter sentenced to five to twenty years of imprisonment, which is below the statutory minimum of ten years. We affirm the sentence.

The offense in this case occurred on November 24, 1998, when police officers from the Oakland County Narcotics Enforcement Team arranged a drug deal between a confidential informant and defendant. Defendant was ultimately apprehended and was found to have 216 grams of crack cocaine in his pockets. On September 23, 1999, defendant pleaded guilty pursuant to a *Cobbs*¹ agreement. At that time, the trial court indicated on the record that it would depart from the statutory minimum sentence of ten years to a minimum term of five years if it found substantial and compelling reasons as permitted by MCL 333.7401(4); MSA 14.15(7401)(4).

Before sentencing, defendant filed a memorandum in support of motion for sentence departure stating several factors that he argued constituted substantial and compelling reasons for a downward departure. At the sentencing hearing held on January 19, 2000, the trial court ultimately accepted defendant's factors set forth in the memorandum as being substantial and compelling to justify a downwards departure and, accordingly, sentenced defendant to a minimum term of five years.

¹ *People v Cobbs*, 443 Mich 276; 505 NW2d 208 (1993).

On appeal, the prosecution contends that the trial court abused its discretion in departing from the statutory minimum sentence because the reasons were neither substantial nor compelling, and that the sentence violates the principle of proportionality. As provided in MCL 333.7401(4); MSA 14.15(7401)(4), a sentencing court may depart from the statutory minimum term if the court finds on the record that there are substantial and compelling reasons to do so. These substantial and compelling reasons, however, must be objective and verifiable. *People v Fields*, 448 Mich 58, 68; 528 NW2d 176 (1995). “A trial court’s determination that the objective and verifiable factors present in a particular case constitute substantial and compelling reasons to depart from the statutory minimum sentence shall be reviewed for an abuse of discretion.” *Id.*, p 78.

The factors noted by defendant in his memorandum, and accepted by the trial court, were: (1) defendant was twenty-one years old at the time of the offense; (2) defendant readily admitted his involvement and accepted responsibility; (3) defendant cooperated with police officers by informing them of his supply source and directly contacting that person to attempt to effectuate the source’s arrest; (4) defendant provided support for his girlfriend and for his daughter; (5) defendant was working at a Courtyard Motel as a host man before his arrest; (6) although defendant has used marijuana, he does not have any drug problems (addiction); (7) the offense did not occur in a school area, nor did it involve delivery to children under the age of seventeen; (8) this was not a drug conspiracy because it involved only defendant and the confidential informant; (9) defendant was a “runner” rather than a major drug supplier and the government’s actions increased the amount of drugs bought from defendant to purposely escalate the crime. The prosecution does not attack these factors as being nonobjective and unverifiable, but contends that these reasons are not substantial and compelling. We disagree because these factors have been accepted as being substantial and compelling reasons to justify a downward departure. See *id.*, pp 76-79; accord, *People v Daniel*, 462 Mich 1, 7; 609 NW2d 557 (2000).

Consequently, we cannot conclude that the trial court abused its discretion in determining that the objective and verifiable factors constituted substantial and compelling reasons to depart from the statutory minimum sentence.

Further, we find no abuse of discretion in the trial court’s decision to sentence defendant to a minimum term of five years. In considering defendant’s background and the circumstances surrounding the offense, the sentence is proportionate and there is simply no indication that the trial court abused its discretion. *People v Milbourn*, 435 Mich 630; 461 NW2d 1 (1990).

Affirmed.

/s/ David H. Sawyer
/s/ Kathleen Jansen
/s/ Hilda R. Gage