

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DEMETRIUS TITUS,

Defendant-Appellant.

UNPUBLISHED

February 27, 2001

No. 216725

Oakland Circuit Court

LC No. 91-110422-FC

91-110423-FC

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JOE LEWIS POWELL, JR.,

Defendant-Appellant.

No. 216959

Oakland Circuit Court

LC No. 91-110424-FC

91-110425-FC

Before: Meter, P.J., and Neff and O’Connell, JJ.

PER CURIAM.

In these consolidated cases, defendants appeal as of right from their ten-to-twenty-year sentences imposed following conviction by a jury of two counts of delivery of 50 to 224 grams of cocaine, MCL 333.7401(2)(a)(iii); MSA 1415(7401)(2)(a)(iii), and one count of conspiracy to deliver 50 to 224 grams of cocaine, MCL 750.157a; MSA 28.354(1). We affirm. These appeals are being decided without oral argument pursuant to MCR 7.214(E).

The court may depart from the statutory minimum term of imprisonment if it finds “substantial and compelling reasons to do so.” MCL 333.7401(4); MSA 14.15(7401)(4). “[T]he Legislature intended ‘substantial and compelling reasons’ to exist only in exceptional cases.” *People v Fields*, 448 Mich 58, 68; 528 NW2d 176 (1995). Only objective factors that are capable of verification may be used to assess whether there are substantial and compelling reasons to deviate from the minimum term of years imposed by the Legislature. *People v Daniel*, 462 Mich 1, 6; 609 NW2d 557 (2000). Appropriate objective factors include “(1) whether there

are mitigating circumstances surrounding the offense, (2) whether the defendant has a prior record, (3) the defendant's age, (4) the defendant's work history, and (5) factors that arise after the defendant's arrest such as the defendant's cooperation with law enforcement officials." *People v Johnson (On Remand)*, 223 Mich App 170, 173; 566 NW2d 28 (1997).

Titus, a high school graduate, was twenty-three when he committed the instant offenses. He had no prior criminal history and had maintained steady employment since 1987. He was well-behaved in prison. He became a minister and was involved in the prison ministry. He was also involved in a group called Fathers Behind Bars. His father and grandmother expressed support for him. However, the evidence of defendant's participation in controlled substance offenses, involving increasing amounts of cocaine, and the fact that defendant committed the instant offenses while on bond for another controlled substance offense, support the conclusion that this case was not so exceptional as to warrant a departure from the statutory minimum sentence. Therefore, the trial court did not err in finding no substantial and compelling reasons to depart from the mandatory minimum sentence.

Powell, also a high school graduate, was twenty when he committed the instant offenses. He had one prior conviction for CCW and was on probation for that offense when he committed the instant offenses. In addition, a 1988 charge of breaking and entering an occupied dwelling had been dismissed, and a 1991 charge of disorderly conduct was pending. He had no employment history. He was well-behaved in prison and received "excellent work reports" regarding his work in prison. His father expressed support for him. Given that defendant committed the instant offenses while on bond for another controlled substance offense, and that defendant had a criminal history, the circumstances of this case were not so exceptional as to warrant a departure from the statutory minimum sentence. Therefore, the trial court did not err in finding no substantial and compelling reasons to depart from the mandatory minimum sentence.

Affirmed.

/s/ Patrick M. Meter
/s/ Janet T. Neff
/s/ Peter D. O'Connell