

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

NOEL JAMISON,

Defendant-Appellant.

UNPUBLISHED

May 29, 2001

No. 219572

Wayne Circuit Court

LC No. 97-008914

Before: K.F. Kelly, P.J., and O'Connell and Cooper, JJ.

PER CURIAM.

Defendant appeals as of right from his bench trial convictions of two counts of delivery of less than fifty grams of cocaine, MCL 333.7401(2)(a)(iv); MSA 14.15(7401)(2)(a)(iv). Defendant was sentenced to ten to twenty years' imprisonment, the sentences to run concurrent to each other, but consecutive to a parole violation. We affirm.

Defendant first argues that the trial court erred in denying his motion to dismiss the charges, brought after he was sentenced, because the prosecution violated the 180-day rule by failing to establish a good faith effort to bring him to trial within 180 days of his incarceration for the criminal sexual conduct charges, as required by MCL 780.131(1); MSA 28.969(1). This Court recently clarified this issue and determined that the 180-day rule does not apply to situations in which the only sentence a defendant could receive was a mandatory consecutive sentence. *People v Falk*, 244 Mich App 718, 721; ___NW2d ___ (2001). The *Falk* Court reasoned that because the purpose of the 180-day rule was to allow an inmate to have concurrent, rather than consecutive sentences, where the statute required consecutive sentences, the 180-day rule did not apply. *Id.* Defendant conceded at oral argument that this issue was resolved by the *Falk* decision.

Defendant had previously been convicted of three counts of first-degree criminal sexual conduct, MCL 750.520b; MSA 28.788(2), and possession of a firearm during the commission of a felony, MCL 750.227b; MSA 28.424(2).¹ A sentence for defendant's current charges, delivery of less than fifty grams of cocaine, "shall be imposed to run consecutively with any term of

¹ For these convictions, defendant was sentenced to 50-100 years.

imprisonment imposed for the commission of another felony.” MCL 333.7401(2)(a)(iv) and (3); MSA 14.15(7401)(2)(a)(iv) and (3). Since this case involves a mandatory consecutive sentence, the 180-day rule does not apply and defendant’s motion to dismiss was properly denied.

Defendant next argues that the trial court abused its discretion by departing from the judicial guidelines in sentencing defendant. We disagree. Sentences are reviewed for an abuse of discretion. *People v Compeau*, 244 Mich App 595, 598; ___ NW2d ___ (2001). A sentence constitutes an abuse of discretion when it violates the principle of proportionality, which requires sentences “to be proportionate to the seriousness of the circumstances surrounding the offense and the offender.” *People v Milbourn*, 435 Mich 630, 635-636; 461 NW2d 1 (1990).

Defendant committed the present crime in 1997, and therefore, the judicial guidelines apply.² The judicial guidelines, as scored, recommended a minimum sentence range of two to eight years. The trial court departed from the scored guidelines when it sentenced defendant to a minimum ten-year term. However, sentencing courts are not required to strictly adhere to the judicial guidelines. “[D]epartures are appropriate where the guidelines do not adequately account for important factors legitimately considered at sentencing.” *Milbourn*, *supra* at 657.

According to the Court in *Milbourn*, an appellate court’s first inquiry should be whether circumstances existed which were not adequately considered by the variables used to score the guidelines. *Id.* at 659-660. If all the factors considered were adequately reflected in the guidelines, and the court still departed from the recommended guidelines, it is possible that the trial court abused its discretion. *Id.* at 660. “Even where some departure appears to be appropriate, the extent of the departure (rather than the fact of the departure itself) may embody a violation of the principle of proportionality.” *Id.*

Here, the trial court stated that it departed from the guidelines because defendant bragged that he was in the business of selling drugs and that he even had an employee, a runner. The trial court further stated that there were “no redeeming qualifications about this matter.” A review of the factors that were considered in determining the guidelines range, showed that the trial court’s rationale for departure was not considered in the guidelines as scored.

The trial court’s reasons for departure were legitimate factors that were not considered in the scoring of the guidelines in this case. Accordingly, in light of the fact that defendant essentially ran a drug business and his substantial criminal history, the sentences imposed were

² The Michigan Supreme Court’s sentencing guidelines were superseded by MCL 769.31 *et seq.*; MSA 28.1097(3.1) *et seq.*, however, the judicial guidelines are still applicable to offenses committed before January 1, 1999. MCL 769.34(1); MSA 28.1097(3.4)(1).

proportionate and justified. See *People v Watkins*, 209 Mich App 1; 530 NW2d 111 (1995), lv den 450 Mich 902. Thus, the trial court did not abuse its discretion in sentencing defendant.

Affirmed.

/s/ Kirsten Frank Kelly

/s/ Peter D. O'Connell

/s/ Jessica R. Cooper