

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

BASHID WHITE,

Defendant-Appellant.

UNPUBLISHED

August 17, 2001

No. 221832

Ingham Circuit Court

LC No. 98-073278-FH

Before: K. F. Kelly, P.J., and White and Talbot, JJ.

PER CURIAM.

Defendant appeals as of right his jury conviction of delivery of more than 50 but less than 225 grams of crack cocaine, MCL 333.7401(2)(a)(iii). He was sentenced to twenty to forty years' imprisonment pursuant to the Controlled Substance Act. MCL 333.7401(2)(a)(iii); MCL 333.7413(2). Defendant raises only sentencing issues on appeal. We affirm.

Defendant first contends that the sentencing court erred by considering statements defendant made in connection with plea negotiations. Defendant contends that consideration of these statements violated MRE 410. We disagree.

We first observe that defendant failed to assert at sentencing that the court's consideration of his statements was violative of MRE 410. MRE 410 states, in part:

Except as otherwise provided in this rule, evidence of the following is not, in any civil or criminal proceeding, admissible against the defendant who made the plea or was a participant in the plea discussions:

* * *

(4) Any statement made in the course of plea discussions with an attorney for the prosecuting authorities which do not result in a plea of guilty or which result in a plea of guilty later withdrawn. [MRE 410(4).]

The Michigan Supreme Court recently decided that a defendant can waive his rights under MRE 410. *People v Stevens*, 461 Mich 655, 668-669; 610 NW2d 881 (2000). In the instant case, defendant signed an agreement acknowledging that if no final agreement was reached and his

prosecution went forward, his statements made during plea negotiations could be used for impeachment. Defendant thereby partially waived his rights pursuant to MRE 410, and the statements were properly admitted for impeachment. *United States v Mezzanatto (On Remand)*, 513 US 196, 210; 115 S Ct 797; 130 L Ed 2d 697 (1995).

The agreement also provided:

However, if Defendant lies or engages in deception of any sort, the promise not to use what Defendant says against him shall be null and void.

. . . Whether or not Defendant has told the truth during the proffer is an issue that shall be within the sole discretion of the prosecuting authorities.

Defendant admitted that he was not completely honest with respect to his statements concerning armed robberies in which he participated.

Additionally, defendant testified at trial that he had an extensive history of drug dealing, involving quantities as large as a kilo, and large sums of money. This testimony provided information to the trial court separate and apart from information provided as part of the plea negotiation. Also, in connection with the presentence report, defendant admitted to his participation in a number of robberies, in addition to his drug activity.

Under all the circumstances, we conclude that the court properly considered information regarding defendant's extensive criminal activities in crafting a sentence appropriate to the offender, and not just the crime. *People v Cervantes*, 448 Mich 620, 631-632; 532 NW2d 831 (1995).

Defendant next contends that the sentencing court abused its discretion by imposing a disproportionately harsh sentence. Defendant contends that his sentence should be evaluated by reference to the legislative sentencing guidelines, although defendant admits that the guidelines themselves do not apply. We disagree.

This Court reviews a trial court's sentencing decision for an abuse of discretion. *People v Bennett*, 241 Mich App 511, 515; 616 NW2d 703 (2000). The statutory sentencing guidelines do not apply to crimes, like defendant's, committed before January 1, 1999. *People v Reynolds*, 240 Mich App 250, 254; 611 NW2d 316 (2000). And, the sentencing guidelines do not apply to sentences, like defendant's, where the Legislature requires a certain minimum sentence, MCL 333.7401(2)(a)(iii), and that are enhanced under the subsequent-offender provisions of the Controlled Substance Act, MCL 333.7413(2). *People v Edgett*, 220 Mich App 686, 690-691; 560 NW2d 360 (1996).

The minimum mandatory statutory sentence for defendant's crime was ten years' imprisonment, with a maximum of twenty years. MCL 333.7401(2)(a)(iii). However, because defendant had a previous conviction under the Controlled Substance Act, his sentence was subject to doubling under the statute. MCL 333.7413(2). See *People v Poole*, 218 Mich App 702, 709; 555 NW2d 485 (1996). The sentence was within the court's statutory authority and, under the circumstances, was not an abuse of discretion.

Affirmed.

/s/ Kirsten Frank Kelly

/s/ Helene N. White

/s/ Michael J. Talbot