

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

V

JOSE ANIBAL MORALES,

Defendant-Appellant.

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UNPUBLISHED

November 30, 2001

No. 223725

Oakland Circuit Court

LC No. 93-123128-FH

Before: White, P.J., and Talbot and E.R. Post\*, JJ.

MEMORANDUM.

Defendant appeals as of right from a ten-to-twenty-year sentence imposed following conviction of possession with intent to deliver 50 to 224 grams of cocaine. MCL 333.7401(2)(a)(iii). We affirm. This appeal is 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). “[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). “[O]nly 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 for certain drug offenses.” *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). “The determination regarding the existence, or nonexistence, of a particular reason or factor is reviewed on appeal under the clearly erroneous standard.” *People v Perry*, 216 Mich App 277, 280; 549 NW2d 42 (1996). The trial court’s determination whether a departure from the mandatory minimum sentence is justified by substantial and compelling reasons is reviewed for an abuse of discretion. *People v Nunez*, 242 Mich App 610, 617; 619 NW2d 550 (2000).

Defendant contends that he was “the ideal candidate for a downward departure,” given that it was questionable whether he even committed the crime of which he was convicted, he was an older, married man with steady employment, he had no prior criminal record, and he was an

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

exemplary prisoner. We disagree. Defendant's belief in his innocence is not an objective and verifiable factor and the evidence clearly supported the jury's verdict. *People v Morales*, unpublished opinion per curiam of the Court of Appeals, issued 6/22/99 (Docket No. 206438), slip op at 2. Defendant's age, marital status, and employment history did not justify a downward departure, given that he had a prior conviction of three counts of criminal sexual conduct and had admittedly sold cocaine in the past. The only available information regarding defendant's prison adjustment showed that he had three misconduct citations, including one for threatening behavior. *Perry, supra* at 283. Accordingly, we find that the trial court did not abuse its discretion in ruling that a downward departure was not justified.

Affirmed.

/s/ Helene N. White  
/s/ Michael J. Talbot  
/s/ Edward R. Post