

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

THOMAS SIMS,

Defendant-Appellant.

UNPUBLISHED

September 17, 2002

No. 233752

Wayne Circuit Court

LC No. 98-012384

Before: Whitbeck, C.J., and Sawyer and Kelly, JJ.

PER CURIAM.

Defendant Thomas Sims appeals as of right from the trial court's sentence of eighteen to thirty-five years' for a conviction of possession with intent to deliver more than 650 grams of cocaine.¹ We affirm. We decide this appeal without oral argument pursuant to MCR 7.214(E).

I. Basic Facts And Procedural History

The prosecutor charged Sims with this drug crime for an incident that occurred in October 1998. The trial court convicted him following a bench trial. The trial court originally sentenced Sims to mandatory life in prison without parole. The trial court later granted Sims' motion for resentencing, at which time he asked the trial court to be lenient, asserted that he had been cooperating with law enforcement, and explained his criminal history. Sims' claim in this appeal is that the trial court denied him his right of allocution at resentencing, which entitles him to a second resentencing.²

II. Standard Of Review

We review the record de novo to determine whether the trial court denied Sims his right to allocute.³

¹ MCL 333.7401(2)(a)(i).

² See *People v Coles*, 417 Mich 523, 532; 229 NW2d 440 (1993).

³ See *Brandt v Brandt*, 250 Mich App 68, 75; 645 NW2d 327 (2002), citing *People v Lowe*, 172 Mich App 347, 349-351; 431 NW2d 257 (1988).

III. Allocution

MCR 6.425(D)(2) prescribes the process of imposing sentence at a sentencing hearing. In relevant part, subsection (c) to that court rule states that the trial court imposing sentence “must” “give the defendant, the defendant’s lawyer, the prosecutor, and the victim an opportunity to advise the court of any circumstances they believe the court should consider in imposing sentence.” Appellate courts have interpreted this plain language as requiring strict compliance with the right to allocution.⁴ Failure to comply with this rule requires resentencing.⁵

Though the Michigan Supreme Court has recently clarified that the trial court “need not ‘specifically’ ask the defendant if he has anything to say on his own behalf before sentencing,”⁶ the trial court asked Sims if he wanted this opportunity. Sims even concedes that the trial court asked him if he wished to comment on the record. The crux of his argument is that the opportunity the trial court gave him to speak was not reasonable. However, he has failed to state what was unreasonable about this opportunity. He has also failed to articulate what he might have said had the trial court given him a more “reasonable” opportunity to allocute. Even if we assume for the sake of argument his opportunity for allocution was substandard in some respect, there is no way for us to determine that, had he been given this other, better opportunity to comment at sentencing, he would have provided additional information that would have convinced the trial court to reduce his sentence further. Thus, he has neither established a violation of the court rule, nor any other sort of prejudice that would require reversal.

Affirmed.

/s/ William C. Whitbeck
/s/ David H. Sawyer
/s/ Kirsten Frank Kelly

⁴ See *People v Wells*, 238 Mich App 383, 392; 605 NW2d 374 (1999).

⁵ *Id.*

⁶ *People v Petit*, 466 Mich 624; 648 NW2d 193, 196 (2002).