

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

RODERICK DUANE LEE,

Defendant-Appellee.

UNPUBLISHED

February 5, 2004

No. 244840

Jackson Circuit Court

LC No. 02-005527-FH

Before: Cooper, P.J., and O'Connell and Fort Hood, JJ.

MEMORANDUM.

Plaintiff appeals by leave granted defendant's sentence following his plea-based conviction for possession of more than 50 grams but less than 225 grams of cocaine, MCL 333.7403(2)(a)(iii), possession with intent to deliver marijuana, MCL 333.7401(2)(d)(iii), and possession with intent to deliver MDMA, MCL 333.7401(2)(b)(ii). We vacate defendant's sentence and remand for resentencing. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiff asserts that the trial court erred in failing to state a substantial and compelling reason for its downward departure from the mandatory ten-year minimum sentence for possession of more than 50 grams but less than 225 grams of cocaine. The court sentenced defendant to 95 months to 20 years' imprisonment, within the usual sentencing guidelines range.

At the time the crime was committed, MCL 333.7403(2)(a)(iii) provided for a mandatory minimum sentence of ten years. MCL 333.7403(3) allowed for a departure from the mandatory minimum if the court found on the record that there was a substantial and compelling reason to do so.¹ Here, the court stated that it did not find a substantial and compelling reason for deviation.

The trial court appeared to be influenced by the sentencing guidelines, as the minimum sentence imposed was at the top of the guidelines range. However, the guidelines statute provides that if a crime has a mandatory determinant penalty, the court shall impose that penalty.

¹ The parties have not addressed the effect of the amendment of the statute, and we express no opinion as to that issue.

MCL 769.34(5). It is inappropriate to rely on the recommended minimum sentence under the guidelines as a substantial and compelling reason to depart from the mandatory minimum term prescribed by the statute. *People v Izarraras-Placante*, 246 Mich App 490, 498; 633 NW2d 18 (2001).

Conviction affirmed, sentence vacated, and remanded for resentencing. We do not retain jurisdiction.

/s/ Jessica R. Cooper

/s/ Peter D. O'Connell

/s/ Karen M. Fort Hood