STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

PATRICK JOSEPH GROULX,

Defendant-Appellant.

UNPUBLISHED
December 2, 2004

No. 249503
Isabella Circuit Court
LC No. 03-000912-FH

Before: Meter, P.J., and Wilder and Schuette, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of possession of marijuana, a misdemeanor. MCL 333.7403(2)(d). This was not his first drug-related offense, and he thus was subject to a double penalty under MCL 333.7413(2). He received an enhanced sentence of sixteen months to two years in prison. Defendant appeals as of right. We affirm but remand for the ministerial task of correcting the judgment of sentence. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant first argues that MCL 333.7403(2), the statute making possession of marijuana a misdemeanor, violates Mich Const 1963, art 4, § 24, the title-object clause. Defendant notes that § 333.7403(2) is a provision of the public health code, and maintains that possession with intent to personally use marijuana could not affect the "public health." This Court has rejected this argument in *People v Kidd*, 121 Mich App 92, 95; 328 NW2d 394(1982); *People v Lemble*, 103 Mich App 220, 222; 303 NW2d 191 (1981); *People v Berry*, 123 Mich App 237, 238; 333 NW2d 234 (1983); *People v Campbell*, 115 Mich App 369, 371; 320 NW2d 381 (1982); and *People v DeLeon*, 110 Mich App 320, 328; 313 NW2d 310 (1981), rev'd on other grounds 414 Mich 851 (1982). Defendant acknowledges only *Kidd*, and asserts that the Court erroneously relied on *People v Trupiano*, 97 Mich App 416, 417-420; 296 NW2d 49 (1980), a case involving a *delivery* conviction, which defendant asserts *would* affect the "public health." However, in *Trupiano*, the Court focused on the public health code's goal of "protect[ing] and promot[ing] the public health." 97 Mich App 420. The Court stated, "The act's reference to the protection and promotion of the public health as its purpose necessarily includes proscriptions and penalties on the *use* of controlled substances." *Id*. (emphasis added). There is no title-object clause violation.

Defendant next argues that his sentence should be vacated on grounds that the law enforcement officers of the Saginaw Chippewa Tribal Police lacked the authority to act as peace

officers under the laws of this state. Specifically, he maintains that the officers were not "[l]aw enforcement officer[s] of a Michigan Indian tribal police force" under MCL 28.609(6) because MCL 28.602(i) and MCL 28.6e(5)(a) define "[l]aw enforcement officer of a Michigan Indian tribal police force" as one "appointed pursuant to 25 CFR 12.100 to 12.103";[1] defendant maintains that these CFR provisions do not exist. However, these provisions appear in the Code of Federal Regulations for revision year 1997. Moreover, defendant did not argue below that the statutory reference to 25 CFR 12.100 to 12.103 nullified the officers' authority on grounds that these were non-existent CFR provisions. Since the CFR provisions in question are identifiable, there is no basis for finding plain error affecting a substantial right. *People v Carines*, 460 Mich 750, 763; 597 NW2d 130 (1999).

Defendant next asserts that the prosecution did not establish the fourth prerequisite set forth in § 28.609(6) for a tribal police officer to exercise the authority of a peace officer under the laws of this state. The four prerequisites are that (1) the officer must be certified, (2) the officer must be deputized or appointed, (3) the deputation or appointment must be pursuant to a contract between the governing authority and the tribe, and (4) this contract must be "incorporated into a self-determination contract, grant agreement, or cooperative agreement between the United States secretary of the interior and the tribal government . . . pursuant to the Indian self-determination and public education assistance act . . . ." MCL 28.609(6).

The prosecutor stipulated that the self-determination contract did not "specifically" mention the contract between the tribe and Isabella County. However, a provision of the self-determination contract dealing with contract requirements dictates that contracts between the tribe and third parties shall be in writing; identify the interested parties, their authority, and the purposes of the contract; state the work to be performed; and state the terms and processes for making any claims and payments. Referring to the self-determination contract, the chief of the tribe testified that the contract between the tribe and Isabella County was incorporated. Thus, we find no clear error in the trial court's finding that the statutory prerequisite in question was met. See *People v LeBlanc*, 465 Mich 575, 579; 640 NW2d 246 (2002) (the trial court's findings of fact are reviewed for clear error).

Defendant also argues that the self-determination contract was not signed by a proper federal authority. Defendant cites 25 USC 450b(i), a provision of the Indian self-determination and public education assistance act, which states that "'[s]ecretary,' unless otherwise designated, means either the Secretary of Health and Human Services or the Secretary of the Interior or both[.]" Defendant argues that the individual who signed the contract was not authorized to sign it on behalf of the Secretary of Health and Human Services or the Secretary of the Interior. He provides a spreadsheet purporting to list the heads of all the subdivisions within these two agencies throughout several years and states that "no where [sic] when the contract was being signed could a [sic] individual have the authority to sign contracts on behalf of the government except those listed on the spread sheet."

[1] We note that MCL 28.602(i) has been amended and now refers to "*former* 25 CFR 12.100 to 12.103" (emphasis added).

Defendant is not entitled to appellate relief with respect to this issue. Indeed, this Court will not consider his unverified spreadsheet, which is not contained in the lower court record. As noted in *Sherman v Sea Ray Boats, Inc*, 251 Mich App 41, 56; 649 NW2d 783 (2002), a party may not expand the record on appeal. Furthermore, defendant has cited no convincing authority for the proposition that only the *heads* of these various subdivisions had the authority to sign contracts on behalf of the agencies in question. We deem his argument abandoned. See *People v Kelly*, 231 Mich App 627, 640-641; 588 NW2d 480 (1998).

Finally, defendant argues that in imposing an enhanced sentence, the trial court relied on both the habitual offender act, MCL 769.10, and the subsequent offender provision of the controlled substances act, MCL 333.7413(2). Upon review of the sentencing transcript, we find no basis for concluding that defendant was sentenced as an habitual offender. First, the habitual offender statute only applies if a person has been convicted of a subsequent felony. MCL 769.10. Defendant was convicted of a misdemeanor. Second, defendant mistakenly asserts that a non-drug-related retail fraud conviction was relied on in enhancing the sentence, but the only conviction certified for purposes of sentencing was a November 3, 1997, conviction for possession with intent to deliver marijuana. The trial court expressly stated that this certification established that defendant was a "second or subsequent offender, drug offender." Moreover, the subsequent offender provision of the controlled substances act allows sentencing to "a term not more than twice the term otherwise authorized." MCL 333.7413(2). For marijuana possession, the authorized punishment was imprisonment for not more than one year. MCL 333.7403(2)(d). Thus, under this provision defendant could be sentenced to not more than two years. This was the sentence imposed. In contrast, under the habitual offender act a second felony offense for a crime punishable by less than a life term can be enhanced to 1½ times that term. MCL 769.10(1)(a). Defendant's sentence was not enhanced by a term that would reflect use of this multiplier. Accordingly, we conclude that defendant's sentence was properly enhanced under the subsequent offender provision of the controlled substances act.

We note that the judgment of sentence mistakenly suggests that there was an habitual offender enhancement and refers to MCL 769.10. Therefore, although we affirm defendant's conviction and sentence, we remand for correction of the judgment of sentence and direct that the references to habitual offender second and MCL 769.10 be deleted. We do not retain jurisdiction.

/s/ Patrick M. Meter
/s/ Kurtis T. Wilder
/s/ Bill Schuette