

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DASHAWN SHERIFF HEAD,

Defendant-Appellant.

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UNPUBLISHED

October 25, 2007

No. 265844

Genesee Circuit Court

LC No. 05-015545-FH

ON REMAND

Before: Cavanagh, P.J., and Murphy and Meter, JJ.

PER CURIAM.

This case is before us on remand from the Michigan Supreme Court, which, in lieu of granting leave to appeal, vacated that portion of our prior judgment that reversed defendant's conviction for maintaining a drug house. *People v Head*, \_\_ Mich \_\_; \_\_ NW2d \_\_, entered September 12, 2007 (Docket No. 133691) (*Head II*). We now affirm defendant's conviction for maintaining a drug house, but vacate the sentence thereon and remand for resentencing because the trial court failed to articulate a substantial and compelling reason for departing from the sentencing guidelines and did not even acknowledge that it was departing from the guidelines.

In our original opinion, we held that "the evidence was simply insufficient to show that defendant exercised authority or control over the home that was the subject of the executed warrant, nor was the evidence sufficient to show that defendant undertook drug-related activities continuously for an appreciable period of time." *People v Head*, unpublished opinion per curiam of the Court of Appeals, issued February 22, 2007 (Docket No. 265844) (*Head I*), slip op at 4-5.

In its remand order, the Supreme Court ruled that "[t]he evidence presented was sufficient to establish that the defendant exercised authority or control over the house." *Head II*, *supra*. We are bound by the Supreme Court's order on the matter.

The Supreme Court also ordered that, "[a]s to the claim that the evidence was insufficient to establish that the house was used continuously for an appreciable period of time for the purpose of conducting drug-related activities, we remand . . . for reconsideration in light of *People v Thompson*, 477 Mich 146[; 730 NW2d 708] (2007)." *Head II*, *supra*.

In *Thompson*, the Supreme Court overruled *People v Griffin*, 235 Mich App 27; 597 NW2d 176 (1999), which had held that the prosecution was required to show that a defendant's

actions occurred continuously for an appreciable period of time in order to sustain a conviction under MCL 333.7405(1)(d).

In *Thompson, supra* at 148, the Court held that MCL 333.7405(1)(d) precludes a conviction for an isolated incident without other evidence of continuity, but the statute does not require the prosecution to show that a defendant's actions occurred continuously for an appreciable period. The Supreme Court further stated that "[t]he phrase 'keep or maintain' implies usage with some degree of continuity that can be deduced by actual observation of repeated acts or circumstantial evidence, such as perhaps a secret compartment or the like, that conduces to the same conclusion." *Id.* at 155.

Here, the evidence revealed only one actual drug transaction taking place at the premises, i.e., a controlled buy of narcotics by police four to five hours before the execution of the search warrant. However, there was sufficient circumstantial evidence showing continuity and suggesting multiple acts of drug trafficking.<sup>1</sup> Aside from the controlled buy, there was evidence that police discovered in the home, or on persons found in the home, a substantial amount of packaged heroin, a large "chunk" of heroin, baggies of marijuana, numerous lottery slips and baggies used for drug packaging, a digital scale next to 29 packets of heroin, large amounts of cash, a loaded AK-47 rifle, and a .357-caliber Smith and Wesson pistol. It is reasonable to infer from the evidence that repeated acts of drug trafficking, sales, and drug-related activities had occurred at and out of the home, and not solely the controlled buy. Thus, under *Thompson*, there was sufficient evidence to support the conviction for maintaining a drug house.

As directed by the Supreme Court order in *Head II*, we must now address the argument "that the trial court imposed a sentence for the drug-house conviction that departed from the statutory guidelines without articulating a substantial and compelling reason for the departure."

Defendant was sentenced to 1 to 2 years' imprisonment for the drug house conviction. The minimum sentencing range for the crime was 0 to 17 months. MCL 769.34 provides in relevant part:

(4) Intermediate sanctions shall be imposed under this chapter as follows:

(a) If the upper limit of the recommended minimum sentence range for a defendant determined under the sentencing guidelines set forth in chapter XVII is 18 months or less, the court shall impose an intermediate sanction unless the court

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<sup>1</sup> When ascertaining whether sufficient evidence was presented at trial to support a conviction, this Court must view the evidence in a light most favorable to the prosecution and determine whether a rational trier of fact could find that the essential elements of the crime were proven beyond a reasonable doubt. *People v Wolfe*, 440 Mich 508, 515-516; 489 NW2d 748 (1992), amended 441 Mich 1201 (1992). Circumstantial evidence and reasonable inferences that arise from such evidence can constitute satisfactory proof of the elements of the crime. *People v Carines*, 460 Mich 750, 757; 597 NW2d 130 (1999). All conflicts in the evidence must be resolved in favor of the prosecution. *People v Terry*, 224 Mich App 447, 452; 569 NW2d 641 (1997).

states on the record a substantial and compelling reason to sentence the individual to the jurisdiction of the department of corrections. An intermediate sanction may include a jail term that does not exceed the upper limit of the recommended minimum sentence range or 12 months, whichever is less.

An intermediate sentence does not include a prison sentence. *People v Stauffer*, 465 Mich 633, 635; 640 NW2d 869 (2002). In this case, the trial court, in sentencing defendant to 1 to 2 years' imprisonment instead of, at most, a 1-year jail term, did not provide a substantial and compelling reason for the departure on the record. In fact, the court did not note that it was even departing from the guidelines. Thus, the imposed sentence constituted error. Further, the prosecution, which concedes error and the need for resentencing, notes that it was not a harmless error because defendant's sentence for maintaining a drug house runs consecutive to the sentence for the felony-firearm conviction. We would also note that the minimum sentence on both the heroin and felon-in-possession convictions is only five months. Defendant is entitled to resentencing on the conviction for maintaining a drug house. If the sentencing court chooses to depart from the guidelines on remand, it must comply with MCL 769.34(4)(a) and the law regarding departures based on substantial and compelling reasons.

We affirm the conviction for maintaining a drug house, but vacate defendant's sentence relative to the conviction and remand for resentencing. We do not retain jurisdiction.

/s/ Mark J. Cavanagh  
/s/ William B. Murphy  
/s/ Patrick M. Meter