

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

NATHANIEL JAMES SESSIONS,

Defendant-Appellant.

UNPUBLISHED

January 8, 2008

No. 275023

Isabella Circuit Court

LC No. 06-000941-FH

Before: Fitzgerald, P.J., and Markey and Smolenski, JJ.

PER CURIAM.

Defendant appeals as of right from his concurrent prison sentences of six to 40 years and three to 40 years imposed on his jury convictions of delivery of MDMA/Ecstasy, MCL 333.7401(2)(b)(i), and delivery of less than 50 grams of cocaine, MCL 333.7401(2)(a)(iv), respectively. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

The prosecution sought enhancement of defendant's sentences under the repeat controlled substance offender statute, MCL 333.7413(2).¹ At sentencing, the trial court noted that the sentencing guidelines recommended minimum term ranges of 51 to 85 months for the conviction of delivery of MDMA/Ecstasy, and five to 23 months for the conviction of delivery of less than 50 grams of cocaine, but that pursuant to MCL 333.7413(2) and *People v Williams*, 268 Mich App 416; 707 NW2d 624 (2005), both the maximum term provided by statute and the minimum term range established by the sentencing guidelines could be doubled. Defense counsel contended that only the high end of each term range should be doubled. The trial court sentenced defendant to six to 40 years for delivery of MDMA/Ecstasy, with credit for 210 days, and three to 40 years for delivery of less than 50 grams of cocaine, with credit for 210 days. Defendant's minimum sentence of six years (72 months) for delivery of MDMA/Ecstasy was within the original sentencing guidelines range of 51 to 85 months, but was a downward departure from the doubled range of 102 to 170 months. Defendant's minimum sentence of three

¹ This statute provides in relevant part that, "an individual convicted of a second or subsequent offense under this article may be imprisoned for a term not more than twice the term otherwise authorized or fined an amount not more than twice that otherwise authorized, or both." Defendant had prior convictions for possession of marijuana.

years (36 months) for delivery of less than 50 grams of cocaine exceeded the original guidelines range of five to 23 months, but was within the doubled range of ten to 46 months.

Defendant appealed and moved for resentencing. Defendant argued that the trial court improperly enhanced his sentences pursuant to MCL 333.7413(2), and erroneously scored Prior Record Variable (PRV) 2, MCL 777.52, at 20 points rather than ten points. This Court retained jurisdiction and remanded this case to the trial court for consideration of the issue of whether PRV 2 was properly scored. On remand, the trial court changed the scoring of PRV 2 to ten points, but declined to change the sentences previously imposed.

Under the sentencing guidelines act, if a minimum sentence is within the appropriate sentencing guidelines range, we must affirm the sentence and may not remand for resentencing absent an error in the scoring of the guidelines or inaccurate information relied on by the trial court in determining the sentence. MCL 769.34(10); *People v Kimble*, 470 Mich 305, 309; 684 NW2d 669 (2004). A party may not raise on appeal an issue challenging the scoring of the guidelines or the accuracy of information relied upon in determining a sentence that is within the appropriate guidelines range unless the party has raised the issue at sentencing, in a proper motion for resentencing, or in a proper motion to remand. MCL 769.34(10); *Kimble, supra*.

In *Williams, supra*, this Court held that MCL 333.7413(2) and MCL 777.18² permit a sentencing court to double not only the maximum term provided by statute, but also the recommended minimum sentence range calculated under the statutory sentencing guidelines. The *Williams* Court held that both the low end and the high end of the guidelines range could be doubled. *Williams, supra* at 426-431.

Defendant argues that *Williams, supra*, was wrongly decided because the *Williams* Court was seemingly unaware that MCL 777.21(4),³ which sets out guidelines scoring instructions for a violation described in MCL 777.18, was the controlling authority, and instead relied on MCL 777.21(3), which applies to guidelines scoring for an offender being sentenced under the habitual offender statutes. We disagree.

Defendant did not object on this ground at sentencing; thus, our review is for plain error. *People v Carines*, 460 Mich 750, 763-764; 597 NW2d 130 (1999). Defendant's reliance on MCL 777.21(4) is misplaced. That statute directs the process for scoring the guidelines for an offender convicted of an offense described in MCL 777.18. MCL 777.21(4) does not govern the enhancement of a sentence for a second or subsequent controlled substance conviction; such enhancement is governed by MCL 333.7413(2). *Williams, supra*, held that the word "term" as used in MCL 333.7413(2) encompassed both the minimum and the maximum term of a sentence;

² This statute provides that the statutory sentencing guidelines apply to MCL 333.7413(2).

³ At the time defendant was sentenced, MCL 777.21(4) provided that if an offender was being sentenced for an offense described in MCL 777.18, the sentencing court was to score the guidelines by "determin[ing] the offense class, offense variable level, and prior record variable level based on the underlying offense." The subsequent amendment of MCL 777.21(4) has no applicability to this case.

therefore, both the maximum term provided by statute and the minimum term as provided by sentencing guidelines could be doubled. *Williams, supra* at 426-427. The trial court correctly relied on *Williams, supra*, to double both the low end and the high end of the guidelines for defendant's offenses. No plain error occurred. Defendant is not entitled to resentencing.

Finally, defendant's argument that the trial court erroneously scored PRV 2 at 20 points instead of ten points is moot in light of the fact that the trial court changed the scoring on remand.

Affirmed.

/s/ E. Thomas Fitzgerald

/s/ Jane E. Markey

/s/ Michael R. Smolenski