

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

MICHAEL DEAN CARAWAY,

Defendant-Appellant.

UNPUBLISHED
November 2, 2010

No. 292587
Calhoun Circuit Court
LC No. 2001-004982-FC

Before: O'CONNELL, P.J., and SERVITTO and SHAPIRO, JJ.

PER CURIAM.

Defendant appeals as of right from the sentence of 20 to 30 years' imprisonment imposed on remand in relation to his jury conviction of delivery of 650 or more grams of cocaine, MCL 333.7401(2)(a)(i). We affirm.

On June 28, 2002, defendant was convicted on an aiding and abetting theory of delivery of 650 or more grams of cocaine. At that time, this offense carried a mandatory minimum term of 20 years' imprisonment. On August 8, 2002, the trial court sentenced defendant to a minimum term of 20 years and to a maximum term of life or any term of years. Defendant appealed. This Court affirmed defendant's conviction but remanded for resentencing on the ground that the maximum term of life or any term of years was invalid as a matter of law under MCL 769.9(2). *People v Caraway*, unpublished per curiam opinion of the Court of Appeals, issued March 23, 2004 (Docket No. 244206), at 1-2.

At the resentencing hearing on April 30, 2009,¹ defense counsel noted that the mandatory minimum term included in MCL 333.7401(2)(a)(i) had been eliminated by amendment to the statute and requested that the court sentence defendant to a term of less than 20 years' imprisonment. The trial court declined, noting that defendant's offense was of a serious nature and that defendant had a history of narcotics offenses. The trial court sentenced defendant to 20

¹ It appears that the lengthy delay between this Court's decision in defendant's original appeal and the resentencing resulted from appeals taken by defendant to our Supreme Court and the federal court.

to 30 years' imprisonment, with credit to be determined. The judgment of sentence indicates that defendant received credit for 90 months and four days of time served.²

Defendant notes that the statute under which he was sentenced was amended in 2003, and the minimum term for the offense of which he was convicted was eliminated; he contends that under these circumstances, the trial court's imposition of a minimum term of 20 years' imprisonment deprived him of equal protection of the law. Defendant also asserts that imposition of the 20-year minimum sentence constituted cruel and unusual punishment. We disagree.

The determination whether a statute applies retroactively is a legal question that we review de novo. *People v Thomas*, 260 Mich App 450, 458; 678 NW2d 631 (2004).

In 2003, the Legislature amended MCL 333.7401 and eliminated mandatory minimum terms. However, defendant's assertion that he was entitled to receive the benefit of the amended statute at resentencing lacks merit. This Court has held that the amended statute was only intended to apply prospectively. See, e.g., *Thomas*, 260 Mich App at 458-459. The trial court correctly imposed the mandatory minimum term in effect at the time defendant committed the offense.³

Furthermore, defendant's argument that his minimum term is disproportionate and unconstitutional lacks merit. A minimum term mandated by statute is presumptively proportionate, *People v Davis*, 250 Mich App 357, 369; 649 NW2d 94 (2002), and a proportionate sentence is not cruel or unusual, *People v Colon*, 250 Mich App 59, 66; 644 NW2d 790 (2002). The trial court correctly sentenced defendant under the version of the statute in effect at the time defendant committed the offense. Defendant's sentence is proportionate and is not cruel or unusual.

Affirmed.

/s/ Peter D. O'Connell

/s/ Deborah S. Servitto

² The Michigan Offender Tracking Service indicates that defendant's earliest release date is October 25, 2021.

³ The version of MCL 333.7401 in effect at the time defendant committed the offense authorized the sentencing court to depart below the mandatory minimum term for certain offenses if it found substantial and compelling reasons to do so; however, the particular offense for which defendant was convicted, delivery of 650 grams or more of a controlled substance, was not an offense for which departure was allowed. MCL 333.7401(4).