

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee

v

DONALD JAMES WYRICK

Defendant-Appellant

FOR PUBLICATION

March 22, 2005

9:05 a.m.

No. 250776

Muskegon Circuit Court

LC No. 02-048013-FH

Official Reported Version

Before: Schuette, P.J., and Fitzgerald and Bandstra, JJ.

FITZGERALD, J. (*concurring in part and dissenting in part*).

I respectfully dissent from the majority's conclusion that possession of marijuana, second offense, constitutes a felony within the meaning of the consecutive sentencing provision of the Public Health Code, MCL 333.7401(3).

The Legislature has designated possession of marijuana as a misdemeanor. MCL 333.7403(2)(d). Defendant's sentence for possession of marijuana was subject to enhancement pursuant to MCL 333.7413(2) because it was a second conviction, and he was sentenced to a term of two years. Michigan's habitual-offender statutes are merely sentence-enhancement mechanisms rather than substantive crimes. *People v Zinn*, 217 Mich App 340, 345; 551 NW2d 704 (1996); *People v Anderson*, 210 Mich App 295, 297-298; 532 NW2d 918 (1995). Sentence enhancement does not convert the misdemeanor of possession of marijuana to a felony. Thus, a second conviction for possession of marijuana is not "another felony" for purposes of the consecutive-sentencing provision set out in MCL 333.7401(3). I would conclude that the trial court erred by ordering the enhanced sentence imposed for the marijuana conviction to be served consecutively to the sentence imposed for the cocaine conviction.

/s/ E. Thomas Fitzgerald