

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

CHARLOTTE LEE JUIDE,

Defendant-Appellant.

UNPUBLISHED

January 21, 1997

No. 182357

Washtenaw County

LC No. 94-002073-FH

Before: McDonald, P.J., and Murphy and J. D. Payant*, JJ.

PER CURIAM.

Defendant pleaded guilty of possession of less than twenty-five grams of cocaine, MCL 333.7403(2)(a)(v); MSA 14.15(7403)(2)(a)(v), and was sentenced to two years' probation. Defendant now appeals as of right claiming the trial court erred in denying her request for the payment of expert witness fees and that she was improperly charged and convicted under subsection (2)(a)(v) rather than subsection (2)(b) of the statute¹. We affirm.

The payment of expert witness fees for indigent defendants before trial is generally left to the trial court's discretion. *In re Attorney Fees of Klevorn*, 185 Mich App 672; 463 NW2d 175 (1990). There was no abuse in this case. Here, defendant moved for fees pursuant to MCL 768.20a(3); MSA 28.1043(1). The trial court never foreclosed payment of the fees, but simply delayed approving the payment of any fees until such time as it appeared necessary and appropriate, i.e., until after defendant underwent examination by the Forensic Center and it was determined an independent expert would be necessary to present her defense. Because defendant chose to enter a guilty plea before an expert witness' work was necessary to her defense for trial and before she appeared for an examination at the Forensic Center, the court's ruling did not deny her the opportunity to present an insanity defense or deny her due process.

* Circuit judge, sitting on the Court of Appeals by assignment.

We also reject defendant's argument she was entitled to be convicted and sentenced under §7403(2)(b) rather than §7403(2)(a). Although at the time defendant was convicted, possession of cocaine, in any amount, was punishable under both sections, the more specific provision concerning cocaine §7403(2)(a) was controlling. *People v Binder (On Rem)*, 215 Mich App 30, 37 n2; 544 NW2d 714 (1996), vacated in part *People v Binder*, 453 Mich 913; ___ NW2d ___ (1996).

Finally we find no merit to defendant's remaining claims. The fact the Legislature decided to treat drug offenses involving cocaine as subject to more serious penalties is an exercise of reasonable legislative judgment. See *People v Hamp*, 170 Mich App 24; 428 NW2d 16 (1988), remanded on other grounds 437 Mich 865; 462 NW2d 589 (1990); *People v Acosta*, 153 Mich App 504; 396 NW2d 463 (1986). Contrary to defendant's intimations, the principle of separation of powers would restrict judicial interference with the prosecutor's exercise of his discretionary authority in deciding what charges to bring. *People v Herrick*, 216 Mich App 594; 550 NW2d 541 (1996). The trial court's authority to sentence is properly limited by the charges brought and any resulting convictions.

Affirmed.

/s/ Gary R. McDonald

/s/ William B. Murphy

/s/ John D. Payant

¹ The enactment of 1994 PA 38 eliminated the overlap between §7403(2)(a) and §7403(2)(b).