

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DUANE MARTIN STURGES,

Defendant-Appellant.

UNPUBLISHED

July 15, 1997

No. 195566

Recorder's Court

LC No. 90-003249

Before: Cavanagh, P.J., and Doctoroff and D.A. Teeple*, JJ.

MEMORANDUM.

Defendant appeals by right his judgment of sentence, of 15 to 30 years imprisonment, following resentencing by the Recorder's Court for the City of Detroit based on the underlying conviction of conspiracy to possess 225 or more but less than 650 grams of cocaine. This case is being decided without oral argument pursuant to MCR 7.214(E).

On prior appeal of right, this Court determined that defendant and his codefendant, Lawrence Butler, had been entrapped. *People v Butler*, 199 Mich App 474; 502 NW2d 333 (1993). The Supreme Court disagreed, finding that the police had done no more than present defendant and Butler with the opportunity to commit the crime of which they were convicted. *People v Butler*, 444 Mich 965; 512 NW2d 583 (1994). However, the Supreme Court subsequently concluded that these circumstances warranted a remand to the trial court for reconsideration of the issue of a possible departure sentence in light of *People v Fields*, 448 Mich 58, 78-79 (1995). On that remand, the trial court concluded that resentencing was appropriate.

At the resentencing, the trial judge noted that, on the positive side, defendant had, with an exception to be detailed, maintained full employment while free on bond pending appeal, and otherwise apparently maintained a law abiding lifestyle. On the negative side, defendant within four months of being freed on appeal bond had been convicted of possession of less than 25 grams of cocaine. Defendant also had a prior conviction for possession of heroin. The trial court concluded that a

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

departure sentence was warranted, but only a minimal departure, resulting in the 15 to 30 year sentence from which appeal has been claimed.

The trial court properly considered the totality of the circumstances and its evaluation of the extent to which a departure is warranted does not represent an abuse of its sentencing discretion. *People v Houston*, 448 Mich 312; 532 NW2d 508 (1995).

Affirmed.

/s/ Mark J. Cavanagh
/s/ Martin M. Doctoroff
/s/ Donald A. Teeple