

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

MARK I. RICHARDSON,

Defendant-Appellee.

UNPUBLISHED

September 23, 1997

No. 199149

Oakland Circuit Court

LC No. 94-135060 FH

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

MEMORANDUM.

Pursuant to a *Cobbs* plea (*People v Cobbs*, 443 Mich 276; 505 NW2d 208 (1993)), defendant pleaded guilty, inter alia, to conspiracy to deliver between 225 and 650 grams of cocaine, MCL 750.157a; MSA 28.354(1), and possession with intent to deliver that amount of cocaine, MCL 333.7401(2)(a)(ii); MSA 14.15(7401)(2)(a)(ii). The bargain involved the trial court's agreement to impose the statutorily mandated 20 to 30 year sentence on the delivery conviction and a departure sentence, as permitted under §7401(4) of the Public Health Code, MCL 333.7401(4); MSA 14.15(7401)(4), on the conspiracy charge. Ultimately, the trial court imposed 20 to 30 year sentences on each count, but the sentences were ordered to run concurrently. In this appeal of right, the prosecutor contends that the sentences must run consecutively. This appeal is being decided without oral argument pursuant to MCR 7.214(E). We reverse and remand.

Sentences for substantive crimes in violation of §7401 of the Public Health Code and conspiracy to commit such offenses must be imposed to run consecutively, not concurrently. *People v Denio*, 454 Mich 691; 564 NW2d 13 (1997). The trial court accordingly erred in imposing concurrent sentences.

This result validates the observation made in *People v Johnson (On Remand)*, 223 Mich App 170,175 n 3; 566 NW2d 28 (No. 194515, April 22, 1997):

We wish to note for the benefit of the trial bench that, as [*People v*] *Fields* [448 Mich 58; 528 NW2d 176 (1995)] emphasizes, the Legislature, with rare exception, intended that drug traffickers receive the minimum mandatory sentence.

Thus, judges should be especially careful in cases involving a defendant who is charged with one of the drug related offenses enumerated under MCL 333.7401; MSA 14.15(7401) when applying the procedure articulated in *Cobbs*.

Reversed and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Jane E. Markey

/s/ Janet T. Neff

/s/ Michael R. Smolenski