

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

SHEILA ANN SMITH,

Defendant-Appellee.

UNPUBLISHED

March 31, 1998

No. 196353

Genesee Circuit Court

LC No. 91-044376 FH

Before: Bandstra, P.J., and MacKenzie and N.O. Holowka*, JJ.

MEMORANDUM.

Plaintiff appeals by delayed leave granted the circuit court's order discharging defendant from lifetime probation. We reverse and remand. This case is being decided without oral argument pursuant to MCR 7.214(E).

Defendant pleaded guilty to delivery of less than fifty grams of cocaine, MCL 333.7401(2)(a)(iv); MSA 14.15(7401)(2)(a)(iv). On July 31, 1991, defendant was sentenced to lifetime probation.

On April 22, 1996, defendant pleaded guilty to violation of probation. Afterward, the trial court entered an order discharging defendant from her probation. In so doing, the trial court exceeded its statutory authority. MCL 771.2(3); MSA 28.1132(3) provides for lifetime probation for certain drug offenses. It states that the period of probation shall not be reduced other than by revocation that results in imprisonment.

This Court construed this provision in *People v Jones*, 217 Mich App 106; 550 NW2d 844 (1996). The Court found that the Legislature clearly intended that once a sentence of lifetime probation is imposed, a court can only change the sentence by imposing imprisonment. A court lacks the authority to set aside a valid sentence of lifetime probation and impose a new sentence, as this would be in essence a reprieve, commutation, or pardon, which can be granted only by the Governor. *Id.* at 108.

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

The trial court clearly exceeded its statutory authority in discharging defendant from lifetime probation. The order discharging defendant is reversed, and this matter is remanded to the circuit court for reinstatement of lifetime probation. We do not retain jurisdiction.

/s/ Richard A. Bandstra

/s/ Barbara B. MacKenzie

/s/ Nick O. Holowka