

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

MICHAEL TODD SUPPES,

Defendant-Appellant.

UNPUBLISHED

May 12, 1998

No. 190640

Saginaw Circuit Court

LC Nos. 93-008367-FH;

93-008371-FH;

93-008372-FH;

93-008373-FH

Before: Hood, P.J., and Markman and Talbot JJ.

PER CURIAM.

Defendant pleaded guilty in four separate files to five counts of delivery of less than fifty grams of cocaine, MCL 333.7401(2)(a)(iv); MSA 14.15(7401)(2)(a)(iv), one count of conspiracy to deliver less than fifty grams of cocaine, MCL 750.157a; MSA 28.354(1), one count of possession of less than twenty-five grams of cocaine, MCL 333.7403(2)(a)(v); MSA 14.15(7403)(2)(a)(v), and one count of possession of a firearm in the commission of a felony, MCL 750.227b; MSA 28.242(c). The trial court sentenced defendant to two to twenty years' imprisonment for each of the convictions for delivery and conspiracy to deliver less than fifty grams of cocaine, two to four years' imprisonment for the conviction of possessing less than twenty-five grams of cocaine, and two years' imprisonment for the felony-firearm conviction. All sentences are to be served consecutive to each other and consecutive to a sentence defendant was serving for a previous conviction of assault with intent to do great bodily harm. Defendant appeals as of right. We affirm.

Defendant first argues that he was entrapped by the police. We disagree. A trial court's finding that the defendant was not entrapped is reviewed under the clearly erroneous standard. *People v Fabiano*, 192 Mich App 523, 525; 482 NW2d 467 (1992). Entrapment will be found only if (1) the police engaged in impermissible conduct that would have induced a person similarly situated as the defendant, though otherwise law-abiding, to commit the crime, or (2) the police engaged in conduct so

reprehensible that it cannot be tolerated by the Court. *Id.* at 526, citing *People v Juillet*, 439 Mich 34; 475 NW2d 786 (1991).

In this case, over the course of a two-day evidentiary hearing, the trial court heard testimony from defendant, the informant who acted as intermediary to the first three cocaine sales, and several police witnesses. The court then meticulously examined the record in terms of the twelve entrapment “factors” set out in *People v Williams*, 196 Mich App 656, 661-662; 493 NW2d 507 (1992). Having reviewed the record, we hold that the trial court’s factual findings, both as to the *Williams* factors and the court’s special findings, to be fully supported. Defendant’s argument fails on both the “government instigation” and “reprehensible conduct” prongs of the entrapment standard. The record does not demonstrate that the informant made any undue or overly aggressive appeals to defendant’s friendship or sympathy for him. Cf. *People v Soper*, 57 Mich App 677, 679; 226 NW2d 691 (1975). Nor does the record demonstrate that the informant badgered defendant into making the sale. Cf. *People v Duis*, 81 Mich App 698, 703; 265 NW2d 794 (1978). Finally, defendant’s argument that he sold the cocaine only because he was afraid of Steve Watson (a third party who was not an agent of the government, but rather the target of the government’s investigation), would weigh against a finding of entrapment. Accordingly, defendant is not entitled to relief on this issue.

Defendant next argues that his sentence on the conspiracy conviction should run concurrently rather than consecutively to his prior sentence on the assault with intent to do great bodily harm conviction. We disagree. Pursuant to MCL 333.7401(3); MSA 14.15(7401)(3), a term of imprisonment imposed for delivery of cocaine “shall be imposed to run consecutively with any term of imprisonment imposed for the commission of another felony.” Questions of statutory interpretation are reviewed de novo on appeal. *People v Sheets*, 223 Mich App 651, 655; 567 NW2d 478 (1997).

Defendant contends that because his conspiracy conviction arose under the general penal statute, MCL 750.157a; MSA 28.354(1), the consecutive sentencing provisions of the Public Health Code do not apply. The Michigan Supreme Court rejected this argument in *People v Denio*, 454 Mich 691; 564 NW2d 13 (1997). The conspiracy statute unambiguously mandates that a person convicted of conspiracy must be punished by the same “penalty” as if he were convicted of the substantive crime he conspired to commit. *Id.* at 701. The consecutive sentencing provision of MCL 333.7401(3); MSA 14.15(7401)(3) constitutes a “penalty” as that term is used in the conspiracy statute. *Id.* at 703. Therefore, consecutive sentencing was required.

Finally, defendant contends that the trial court was without authority to make defendant’s sentence for possession of cocaine consecutive to his prior sentence for assault with intent to do great bodily harm. We disagree. MCL 768.7b; MSA 26.1030(2) provides in pertinent part:

(2) Beginning January 1, 1992, if a person who has been charged with a felony, pending the disposition of the charge, commits a subsequent offense that is a felony, upon conviction of the subsequent offense or acceptance of a plea of guilty, guilty but mentally ill, or nolo contendere to the subsequent offense, the following shall apply:

(a) Unless the subsequent offense is a major controlled substance offense,¹ *the sentences imposed for the prior charged offense and the subsequent offense may run consecutively.* [MCL 768.7b(2)(a); MSA 26.1030(2) (2)(a) (footnote added; emphasis added).

In this case, defendant committed the assault with intent to do great bodily harm offense while the possession of cocaine charge was pending. Both offenses were felonies. Therefore, the trial court had statutory authority to order that defendant's sentence on the prior charged offense (possession of cocaine) run consecutive to his sentence on the subsequent offense (assault with intent to do great bodily harm).

Affirmed.

/s/Harold Hood

/s/ Stephen J. Markman

/s/ Michael J. Talbot

¹ Possession of less than twenty-five grams of cocaine is not a major controlled substance offense. See MCL 761.2; MSA 28.843(12).