STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DARNELL BENFORD,

Defendant-Appellant.

UNPUBLISHED
July 24, 1998

No. 174884
Recorder's Court
LC No. 93-012233

Before: MacKenzie, P.J., and Whitbeck and G.S. Allen, Jr.*, JJ.

PER CURIAM.

Following a bench trial, defendant was convicted of possession of 50 grams or more, but less than 225 grams of cocaine, MCL 333.7403(2)(a)(iii); MSA 14.15(7403)(2)(a)(iii). Defendant was sentenced to ten to twenty years' imprisonment and now appeals as of right. We affirm.

Defendant first argues that he was denied his due process rights when he was deprived of an arraignment. We disagree. Defendant did not waive his right to an arraignment, rather he waived his right to a formal reading of the charges at the arraignment. Cf. *People v Phillips*, 383 Mich 464, 470; 175 NW2d 740 (1970). Notwithstanding the reading of the formal charges, we find that the purposes of the arraignment were satisfied: the preliminary examination date was set, bond was set, and defendant had previously been provided counsel. See *People v Killebrew*, 16 Mich App 624, 627; 168 NW2d 423 (1969). Therefore, defendant was not deprived of any constitutional right, US Const, Ams VI, XIV; Const 1963, art 1, § 20; to an arraignment.

Defendant also argues that he was never apprised of the mandatory minimum and maximum sentences for the crimes he was charged with pursuant to MCR 6.104(E)(1). This information is conveyed to a defendant during a formal reading of the charges at the arraignment. Therefore, we find that defendant necessarily waived that right along with the formal reading of the charges against him.

Next, defendant argues that he was subjected to wholly ineffective trial counsel. We disagree. The record establishes that the court indicated at the arraignment that if defendant was not going to plead guilty, a judge would be drawn. Trial counsel asked if she could approach the bench. After the

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

bench conference, the trial court indicated that it would recall the case. Shortly thereafter, the case was recalled and the matter was set for trial. At the *Ginther*[1] hearing, trial counsel indicted that when she approached the bench, she wanted to see if the judge would agree to a lesser sentence or a sentence other than incarceration. At that time, the court offered defendant three to twenty months in boot camp if defendant could pass a drug urinalysis. Trial counsel indicated that she took defendant into the hall and discussed the *Cobbs*[2] sentence evaluation with him[3]. Defendant indicated that he was unable to pass a drug urinalysis and therefore, he could not accept the offer. When the case was recalled, the trial judge set the matter for a trial date because defendant was unable to fulfill the condition of the offer. We find defendant has failed to establish by a preponderance of the evidence that during the brief recess at the arraignment defense counsel did not convey the *Cobbs* sentence evaluation to him. See *People v Williams*, 171 Mich App 234, 241; 429 NW2d 649 (1988).

Defendant also challenges trial counsel's decision to take his case to trial knowing that officers had witnessed defendant holding a bag of cocaine and that he had confessed to possessing the cocaine. We find defendant's argument to be without merit. Defendant admits that based upon the evidence, it was clear that he would be convicted. Therefore, defendant was not prejudiced by his trial counsel's actions and his ineffective assistance of counsel claim must fail. *People v Pickens*, 446 Mich 298, 338; 521 NW2d 797 (1994).

Defendant next argues that the trial court abused its discretion in failing to find substantial and compelling reasons to depart downward from the mandatory minimum sentence. Here, defendant was convicted of MCL 333.7403(2)(a)(iii); MSA 14.15(7403)(2)(a)(iii), which is subject to a mandatory minimum sentence of ten years. A trial court may depart from a mandatory minimum term of imprisonment for an adult for this crime if it finds on the record that there are substantial and compelling reasons to do so. MCL 333.7403(3); MSA 14.15(7403)(3); *Dean v Dep't of Corrections*, 453 Mich 448, 451-452; 556 NW2d 458 (1996). Defendant argues that the trial court did not consider his young age, lack of a prior criminal record, and work history. However, while these are factors which should be considered by the trial court, *People v Fields*, 448 Mich 58, 76-77; 528 NW2d 176 (1995), they do not warrant a departure from the guidelines in this case. Furthermore, the trial court properly considered, and placed emphasis on, defendant's culpability. Defendant was a lone and willing participant, he was not under duress, nor was he enticed to commit the crime. The court further indicated that the incident did not appear to be an isolated event; rather, it reflected that defendant used drug sales to supplement his income. Under these facts, we find that the trial court did not abuse its discretion in refusing to find defendant's reasons to be substantial and compelling factors for a downward departure from the generally mandatory minimum sentence.

Lastly, defendant argues that his sentence is disproportionate to the offense and the offender. Because legislatively mandated sentences are presumptively proportionate, *People v Ealy*, 222 Mich App 508, 512; 564 NW2d 168 (1997), we reject this argument.

Affirmed.

/s/ Barbara B. MacKenzie
/s/ William C. Whitbeck
/s/ Glenn S. Allen, Jr.

[1] *People v Ginther*, 390 Mich 436; 212 NW2d 922 (1973).

[2] *People v Cobbs*, 443 Mich 276; 505 NW2d 208 (1993).

[3] We recognize that the sentence evaluation was not placed on the record as required by *Cobbs*, *supra* at 283. However, we also recognize that it was not formally placed on the record because defendant was either unable or unwilling to comply with the terms of the sentence evaluation.