STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

DANNY MIKE DANIEL,

Defendant-Appellee.

UNPUBLISHED
November 20, 1998

No. 207755
Oakland Circuit Court
LC No. 97-150521 FH

Before: Holbrook, Jr., P.J., and Markey and Whitbeck, JJ.

PER CURIAM.

Following a two-day jury trial, defendant was convicted of three counts of delivery of less than 50 grams of cocaine, MCL 333.7401(2)(a)(iv); MSA 14.15(7401)(2)(a)(iv), and one count of delivery more than 50 but less than 225 grams of cocaine, MCL 333.7401(2)(a)(iii); MSA 14.15(7401)(2)(a)(iii). Defendant was sentenced to serve identical consecutive terms of one to twenty years in prison on each delivery of less than 50 grams of cocaine conviction. As for defendant's conviction of delivery of more than 50 but less than 225 grams of cocaine, finding that substantial and compelling reasons existed to depart from the statutorily mandated ten-year minimum sentence, the trial court sentenced defendant to five to twenty years' imprisonment. This sentence is to be served consecutive to the other sentences imposed. The prosecution appeals as of right. We affirm.

Defendant's convictions arise out of a series of four cocaine transactions conducted between defendant and an undercover officer assigned to the Michigan State Police Narcotics Enforcement Team. Each of the four transactions was initiated when the officer contacted defendant by means of an electronic pager. When defendant responded to the page, the officer would request to purchase a specified amount of cocaine. The two would then meet at a local liquor store, where defendant would deliver the cocaine in return for an agreed upon cash payment.

The prosecution's sole argument on appeal is that the trial court erred when it failed to impose the ten year minimum sentence prescribed by the Legislature for the offense of delivery of more than 50 but less than 225 grams of cocaine. MCL 333.7401(2)(a)(iii); MSA 14.15(7401)(2)(a)(iii). We disagree. A trial court may depart from imposing the mandated minimum sentence for this offense "if

the court finds on the record that there are substantial and compelling reasons to do so." MCL 333.7401(4); MSA 14.15(7401)(4) When determining whether substantial and compelling reasons exist to justify downward departure, "a sentencing court must articulate on the record 'objective and verifiable factors' that provide 'substantial' and 'compelling' bases to depart from the mandatory minimum prescribed by the statute." *People v Johnson (On Remand)*, 223 Mich App 170, 173; 566 NW2d 28 (1997). Factors which may be considered include: "(1) whether there are mitigating circumstances surrounding the offense, (2) whether the defendant has a prior record, (3) the defendant's age, (4) the defendant's work history, and (5) factors that arise after the defendant's arrest, such as the defendant's cooperation with law enforcement officials." *Id.* Accord *People v Fields*, 448 Mich 58, 76-77; 528 NW2d 176 (1995).

When reviewing a sentencing court's decision to depart from the mandatory minimum sentence, "[t]he determination regarding the existence . . . of a particular factor is reviewed on appeal under the clearly erroneous standard." *People v Perry*, 216 Mich App 277, 280; 549 NW2d 42 (1996). A trial court's "determination that a particular factor is objective and verifiable [is] . . . reviewed . . . . as a matter of law. A trial court's determination that the objective and verifiable factors present . . . constitute substantial and compelling reasons to depart from the statutory minimum sentence [is] . . . reviewed for abuse of discretion." *Fields, supra* at 77-78.

After reviewing the lower court record, we can find no clear error in the trial court's determination that substantial and compelling factors existed to support a departure for the statutory minimum sentence. We conclude also that the trial court did not abuse its discretion when it determined that those properly identified factors "constitute substantial and compelling reasons to depart from the statutory minimum sentence." *Fields, supra* at 78. Further, we do not believe that the sentence imposed is disproportionately lenient. *Perry, supra* at 280; *People v Catanzarite*, 211 Mich App 573, 585; 536 NW2d 570 (1995).

Affirmed.

/s/ Donald E. Holbrook, Jr.
/s/ Jane E. Markey