

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

JOHN HODGES,

Defendant-Appellee.

UNPUBLISHED  
December 1, 1998

No. 206515  
Oakland Circuit Court  
LC Nos. 90-102886 FH  
90-102887 FH  
90-102888 FH

AFTER SECOND REMAND

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Before: Smolenski, P.J., and McDonald and Doctoroff, JJ.

PER CURIAM.

On May 20, 1992, defendant pleaded guilty to three counts of delivery of between 50 and 225 grams of cocaine, MCL 333.7401(2)(a)(iii); MSA 14.15(7401)(2)(a)(iii). Defendant was initially sentenced on August 3, 1992, to three concurrent sentences of ten to twenty years' imprisonment. Thereafter, on November 18, 1992, defendant pleaded guilty to, and was convicted of, third-degree criminal sexual conduct (CSC) in Macomb Circuit Court. On December 21, 1992, defendant was sentenced in Macomb Circuit Court to ten to fifteen years' imprisonment for the CSC offense. Meanwhile, both the prosecution and defendant appealed defendant's sentences for the three drug convictions to this Court, and this Court remanded for resentencing. *People v Hodges*, unpublished memorandum opinion of the Court of Appeals, issued March 29, 1994 (Docket Nos. 155439 and 155717). Upon resentencing on June 1, 1994, defendant was sentenced to consecutive terms of four to twenty years' imprisonment on one count and three to twenty years' imprisonment on the other two counts. The prosecution and defendant again appealed, and this Court again remanded for resentencing. *People v Hodges*, unpublished opinion per curiam of the Court of Appeals, issued September 13, 1996 (Docket Nos. 176383 and 176778). At this second resentencing, held on February 12, 1997, the trial court sentenced defendant to two sentences of three to twenty years' imprisonment and one sentence of four to twenty years' imprisonment for the three drug convictions, to be served consecutively to each other. However, the trial court determined that the drug sentences were to be served concurrently with the CSC sentence. The prosecution appeals as of right from the judgments of sentence entered after the second resentencing for the drug offenses on the basis that the

trial court should have ordered that defendant's drug sentences run consecutively to his CSC sentence. We agree and remand for resentencing.

Whether defendant's sentences for the drug convictions must be served consecutively to his CSC sentence is a question of law involving statutory interpretation, which is reviewed de novo. *People v Denio*, 454 Mich 691, 698; 564 NW2d 13 (1997).

MCL 333.7401(3); MSA 14.15(7401)(3), provides in relevant part:

A term of imprisonment imposed pursuant to subsection (2)(a) or section 7403(2)(a)(i), (ii), (iii), or (iv) shall be imposed to run consecutively with any term of imprisonment imposed for the commission of another felony.

The prosecution argues that defendant's CSC conviction is "another felony" and pursuant to MCL 333.7401(3); MSA 14.15(7401)(3), he must be sentenced consecutively for that conviction and the delivery of cocaine convictions. "[T]he term 'another felony' as used in § 7401(3) includes any felony for which the defendant has been sentenced either before or simultaneously with the controlled substance felony enumerated in § 7401(3) for which a defendant is currently being sentenced." *People v Morris*, 450 Mich 316, 320; 537 NW2d 842 (1995). Moreover, "[w]here a defendant is sentenced in different cases at different times, a consecutive sentence may not be imposed under subsection 7401(3) unless, at the time of sentencing for a conviction pursuant to subsection 7401(2)(a), the defendant being sentenced is already serving a term of imprisonment imposed for the commission of another felony." *People v Hardy*, 212 Mich App 318, 323; 537 NW2d 267 (1995).

Here, because this Court previously ordered resentencing based on its finding that Judge Kerwin considered improper factors when sentencing defendant, the sentence imposed by Judge Kerwin was based on a misconception of the law and was invalid. *People v Thomas*, 223 Mich App 9, 11; 566 NW2d 13 (1997); *People v Perry*, 216 Mich App 277, 282; 549 NW2d 42 (1996). Therefore, on resentencing, every aspect of the sentence was before Judge Schnelz de novo. *People v Williams (After Second Remand)*, 208 Mich App 60, 65; 526 NW2d 614 (1994). When defendant was resentenced for the drug offenses by Judge Schnelz on February 12, 1997, defendant was serving a term of imprisonment imposed for the commission of another felony, the CSC offense. Accordingly, the sentence imposed for the drug convictions was required to run consecutively to the sentence defendant was already serving for the CSC conviction. MCL 333.7401(3); MSA 14.15(7401)(3); *Hardy, supra*, 212 Mich App 323.

Contrary to defendant's contention, the fact that the CSC incident occurred after the commission of the drug offenses is irrelevant. MCL 333.7401(3); MSA 14.15(7401)(3) makes no reference to the order in which the offenses are committed or the order in which the convictions are obtained. According to MCL 333.7401(3); MSA 14.15(7401)(3), whether consecutive sentences are required depends on the timing of the imposition of sentence. Hence, we again remand for resentencing.

Reversed and remanded for resentencing in accordance with this opinion. We do not retain jurisdiction.

/s/ Michael R. Smolenski

/s/ Gary R. McDonald

/s/ Martin M. Doctoroff