

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

PAUL EDWIN POTTER,

Defendant-Appellant.

UNPUBLISHED
November 9, 1999

No. 215004
Oakland Circuit Court
LC No. 94-133473 FC

Before: Whitbeck, P.J., and Gribbs and White, JJ.

MEMORANDUM.

Defendant appeals as of right from his sentence of ten to thirty years in prison for his plea-based conviction of conspiracy to possess with intent to deliver between 225 and 650 grams of cocaine, MCL 333.7401(2)(a)(ii); MSA 14.15(7401)(2)(a)(ii); MCL 750.157a; MSA 28.354(1). We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

On September 8, 1994, defendant pleaded guilty in return for dismissal of other charges and an agreement to testify in the trials of his co-defendants. Pursuant to the plea bargain, the trial court delayed sentencing until after defendant testified in the other related cases, which were tried in late 1997.

Defendant was sentenced on August 14, 1998. He argued that the trial court had lost jurisdiction to sentence him because sentencing was delayed for a period exceeding one year. MCL 771.1(2); MSA 28.1131(2). The trial court rejected defendant's argument, finding that the parties understood that by virtue of defendant agreeing to testify in the other cases, sentencing could not take place within one year. The trial court deviated from the twenty-year minimum term mandated by MCL 333.7401(2)(a)(ii); MSA 14.15(7401)(2)(a)(ii), and sentenced defendant to ten to thirty years in prison, with credit for 122 days.

Defendant argues that the trial court was without jurisdiction to impose sentence because the delay exceeded one year, MCL 771.1(2); MSA 28.1131(2), and because good cause for the delay was not shown. We disagree and affirm. A delay of more than one year in imposing sentence does not necessarily deprive the court of jurisdiction to sentence; however, such a delay should occur only for

good cause and only in limited circumstances. *People v Richards*, 205 Mich App 438, 441-442; 517 NW2d 823 (1994). A defendant may waive the requirement that sentencing take place within one year by agreeing to a delay exceeding one year. *Id.*, 445. Here, the plea agreement provided that sentencing would be delayed until after defendant had testified in the other cases. At the plea hearing, the prosecutor stated that sentencing was to take place within one year; however an affidavit from the officer in charge presented to the court at the time of sentencing established that defendant agreed to a delay exceeding one year when it became apparent that his participation in the trials of his co-defendants could not be completed within one year. Defendant waived the issue of jurisdiction and acquiesced to the court's exercise of personal jurisdiction to impose sentence.

Affirmed.

/s/ William C. Whitbeck

/s/ Roman S. Gibbs

/s/ Helene N. White