

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

---

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

LOUIS GREGORY MILONAS,

Defendant-Appellee.

---

UNPUBLISHED

February 11, 2000

No. 217584

Oakland Circuit Court

LC Nos. 97-151872-FH;

97-151873-FH;

97-151874-FH;

97-151875-FH

Before: O'Connell, P.J., and Meter and T. G. Hicks\*, JJ.

PER CURIAM.

The prosecution appeals, by delayed leave granted, defendant's sentence of five to twenty years for his plea-based conviction of one count of delivery of fifty grams or more but less than 225 grams of cocaine, MCL 333.7401(2)(a)(iii); MSA 14.15(7401)(2)(a)(iii). The prosecution also appeals, by delayed leave granted, defendant's sentences of lifetime probation for his plea-based convictions of three counts of delivery of less than fifty grams of cocaine, MCL 333.7401(2)(a)(iv); MSA 14.15(7401)(2)(a)(iv). We reverse in part and remand for resentencing. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

The trial court evaluated the cases pursuant to *People v Cobbs*, 443 Mich 276; 505 NW2d 208 (1993), and indicated that it would impose a minimum term not exceeding five years for the conviction of delivery of 50 to 225 grams of cocaine, if circumstances warranted a downward departure. The five-year term represented a downward departure from the statutorily mandated minimum term of ten years for the offense. The trial court indicated that it would impose sentences of lifetime probation for the convictions of delivery of less than fifty grams of cocaine. Defendant pleaded guilty to the charges, and the trial court sentenced defendant in accordance with the *Cobbs* agreement. In imposing sentence, the court found that substantial and compelling reasons existed to depart from the mandated minimum term of ten years for the conviction of delivery of 50 to 225 grams of cocaine. The

---

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

court cited defendant's age, his lack of a prior record, his work history, his education, and his family ties as the substantial and compelling reasons.

A court may depart downward from a mandated minimum term if it finds on the record that substantial and compelling reasons exist to do so. MCL 333.7401(4); MSA 14.15(7401)(4). Substantial and compelling reasons must be objective and verifiable, and can be based on pre- or post-arrest conduct. *People v Fields*, 448 Mich 58, 76-78; 528 NW2d 176 (1995). Such factors include circumstances that mitigate the defendant's culpability and the defendant's age, prior record, and work history. *People v Shinholster*, 196 Mich App 531, 534; 493 NW2d 502 (1992). The determination of whether factors constituted substantial and compelling reasons to depart from a minimum term is reviewed for an abuse of discretion. *Fields, supra* at 77-78.

We reverse the sentence imposed for defendant's conviction of delivery of 50 to 225 grams of cocaine and remand for resentencing. Defendant's age, thirty-three at the time he committed the instant offenses, is not exceptional and does not warrant downward departure. See *People v Pearson*, 185 Mich App 773, 779; 462 NW2d 839 (1990). The lack of a prior record is an appropriate factor for consideration; however, given defendant's pattern of engaging in multiple narcotics transactions, his lack of a prior record is not sufficient, in and of itself, to warrant downward departure. *Id.* Defendant's history of employment at various jobs for short periods of time is not exceptional and does not warrant downward departure. Finally, defendant's education and his concern for his family are not the type of extraordinary circumstances on which downward departure is justified. See *Fields, supra* at 68. The trial court abused its discretion by finding that substantial and compelling reasons existed for departing below the mandatory minimum term of ten years for the conviction of delivery of 50 to 225 grams of cocaine.

Plaintiff's assertion that the sentences of lifetime probation for the convictions of delivery of less than fifty grams of cocaine are disproportionately lenient under *People v Milbourn*, 435 Mich 630; 461 NW2d 1 (1990), is without merit. That sentence is specifically authorized by statute, MCL 333.7401(2)(a)(iv); MSA 14.15(7401)(2)(a)(iv), and thus is presumptively valid and proportionate. *People v Arcos*, 206 Mich App 374, 377; 522 NW2d 655 (1994). The prosecution did not rebut this presumption.

The sentence imposed for the conviction of delivery of 50 to 225 grams of cocaine is reversed and this matter is remanded for resentencing on that conviction only. We note that if the trial court cannot articulate substantial and compelling reasons for departure and therefore must deviate from the agreed-upon sentence, defendant has the right to withdraw from the plea agreement. *Cobbs, supra* at 283.

Defendant's five to twenty year sentence is vacated, and this case is remanded for further proceedings in accordance with this opinion. We do not retain jurisdiction.

/s/ Peter D. O'Connell

/s/ Patrick M. Meter

/s/ Timothy G. Hicks