

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee/Cross-Appellant,

v

ZULEMA RIVERA,

Defendant-Appellant/Cross-Appellee.

UNPUBLISHED

July 7, 2000

No. 211714

Oakland Circuit Court

LC Nos. 93-123372-FH;

93-123420-FH;

93-123421-FH

Before: Markey, P.J., and Gribbs and Griffin, JJ.

PER CURIAM.

Defendant appeals her convictions and sentences by right. Plaintiff challenges defendant's sentences on cross-appeal. We affirm.

This case has a lengthy history. In April 1994, defendant pled guilty in three separate files to delivery of 225 grams or more but less than 650 grams of cocaine, MCL 333.7401(2)(a)(ii); MSA 14.15(7401)(2)(a)(ii); conspiracy to deliver 225 grams or more but less than 650 grams of cocaine, MCL 750.157a; MSA 28.354(1), delivery of 50 grams or more but less than 225 grams of cocaine, MCL 333.7401(2)(a)(iii); MSA 14.15(7401)(2)(a)(iii), and two counts of delivery of less than 50 grams of cocaine, MCL 333.7401(2)(a)(iv); MSA 14.15(7401)(2)(a)(iv). Defendant entered her pleas, pursuant to *People v Cobbs*, 443 Mich 276; 505 NW2d 208 (1993), with the expectation that she would be sentenced to less than the mandatory minimums for the offenses. Defendant was sentenced in June 1994, to sentences below the mandatory minimums: consecutive terms of one to twenty years, two to thirty years, and two to twenty years. Plaintiff appealed defendant's sentences as of right. This Court found that the trial court abused its discretion by the extent of its departure from the mandatory minimum sentences, and issued an order vacating defendant's sentences and remanding for resentencing. *People v Rivera*, #177198, issued 6-4-1996.

On remand, defendant withdrew her pleas and requested an entrapment hearing. The trial court held a hearing and concluded that defendant had not been entrapped. Defendant ultimately pled guilty to the same offenses. She was sentenced, again below the mandatory minimums, to consecutive terms of five to thirty years, two to twenty years, and lifetime probation.

Defendant argues on appeal that she was denied due process by the tactics of the police, who bought cocaine from her in increasingly large quantities, which led to longer sentences and consecutive sentencing. Defendant argues that she was subjected to “sentencing entrapment.” Even assuming arguendo that defendant’s entrapment claim is not waived by her guilty plea, there is no merit to this claim.

Sentencing entrapment occurs when a defendant, although predisposed to commit a lesser crime, is entrapped into committing a greater offense subject to more severe punishment. *People v Ealy*, 222 Mich App 508, 510-511; 564 NW2d 168 (1997). We agree with the trial court that defendant was not entrapped. The record supports that trial court’s conclusion that the police did nothing more than present defendant with the opportunity to commit the crimes. *Id.* Defendant’s convictions arose out of a series of five sales of cocaine to undercover officers, in the amounts of one-sixteenth ounce, one-quarter ounce, two ounces and ten ounces. The evidence at defendant’s entrapment hearing established that, throughout her dealings with the undercover officers, defendant told them that she could get any amount of cocaine they wanted and always indicated that she could “do more.” Defendant never indicated a lack of willingness to provide the undercover officers with cocaine and repeatedly indicated that she wanted to do “business” with them. Defendant showed no hesitation about committing the crimes, and there is no evidence that the police made the additional purchases just to escalate her eventual sentence. The trial court did not err in finding that the police officers’ conduct here was neither reprehensible nor impermissible. *People v Juillet*, 439 Mich 34, 56, 61; 475 aNW2d 786 (1991).

Plaintiff argues on cross-appeal that the trial court abused its discretion in deviating from the mandatory minimum sentences in this case. We do not agree. The trial court may deviate from the statutory minimums if it finds on the record that there are substantial and compelling reasons to do so. *People v Fields*, 448 Mich 58, 62; 528 NW2d 176 (1995). The trial court here acknowledged the seriousness of the offenses and noted the factors that weighed against a sentencing departure. The trial court also, however, properly identified defendant’s age, her work history, and her lack of prior criminal record as potential bases for a sentencing departure. *Id.* at 77. The trial court also noted defendant’s community service, her attainment of a GED and her exemplary attitude and work habits. Under all the circumstances, we find no abuse of discretion.

Affirmed.

/s/ Jane E. Markey
/s/ Roman S. Gribbs
/s/ Richard Allen Griffin