

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee/Cross-Appellant,

v

ALONZO TERRELL BLAIR,

Defendant-Appellant/Cross-
Appellee.

UNPUBLISHED
February 27, 2001

No. 219142
Oakland Circuit Court
LC Nos. 98-160833-FH
98-160834-FH
98-160835-FH

Before: Meter, P.J., and Neff and O’Connell, JJ.

PER CURIAM.

Defendant was convicted of one count of delivery of less than fifty grams of cocaine, MCL 333.7401(2)(a)(iv); MSA 14.15(7401)(2)(a)(iv), for which the trial court, applying a second-offense habitual offender sentence enhancement under MCL 333.7413(2); MSA 14.15(7413)(2), sentenced him to one to forty years’ imprisonment. Defendant was also convicted of two counts of delivery of 50 to 224 grams of cocaine, MCL 333.7401(2)(a)(iii); MSA 14.15(7401)(1)(a)(iii), for which the trial court, again applying second-offense habitual offender enhancements, sentenced him to two terms of eight to forty years’ imprisonment. Defendant’s sentences are to be served consecutively. Defendant appeals as of right, and the prosecutor cross-appeals, the two longer sentences. We agree with the prosecutor that the trial court should not have departed downward from the mandatory minimum sentence for delivery of 50 to 224 grams of cocaine. Accordingly, we reverse defendant’s sentences for delivery of 50 to 224 grams of cocaine and remand for resentencing on those convictions. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

The only issue on appeal concerns the trial court’s downward departure (to eight years) from the mandatory ten-year minimum sentence for delivery of 50 to 224 grams of cocaine. See MCL 333.7401(2)(a)(iii); MSA 14.15(7401)(2)(a)(iii). Defendant contends that the trial court should have reduced the minimum sentence more than it did, whereas the prosecutor contends that the court should not have reduced the minimum sentence at all.

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 they can be based on pre- or post-arrest conduct. *People v Fields*, 448 Mich 58, 62, 76-78; 528 NW2d 176 (1995). Relevant factors include circumstances that mitigate the defendant's culpability, as well as 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 constitute substantial and compelling reasons to depart from a minimum term is reviewed for an abuse of discretion. *Fields*, *supra* at 78.

"[T]he Legislature intended 'substantial and compelling reasons' to exist only in exceptional cases." *Fields*, *supra* at 68; see also *People v Johnson (On Remand)*, 223 Mich App 170, 172-173; 566 NW2d 28 (1997) (indicating that deviations from mandatory sentences are appropriate only in exceptional cases). Here, the trial court found that a downward departure was appropriate because defendant had given the police the name of his cocaine supplier. We cannot conceive how merely giving the name of a supplier, under the circumstances of this case, constituted an "exceptional" circumstance allowing departure under *Fields*, *supra* at 68, and *Johnson*, *supra* at 172-173. Indeed, the other justifiable and verifiable factors disfavoring departure in this case, as well as the minimal nature of defendant's cooperation with the authorities, convince us that a downward departure from the mandatory minimum was not warranted.

First, defendant refused to identify the friend who aided and abetted him in the commission of the crimes, and he provided no other information about the supplier aside from the supplier's name. Second, defendant had a history of controlled substance offenses involving increasing amounts of cocaine. Third, defendant committed the instant offenses while on probationary tether for a prior controlled substance offense. Fourth, defendant was in his mid-twenties when he committed the instant offenses and therefore was old enough to understand the ramifications of his actions. Fifth, defendant had no stable work history. In light of these circumstances, merely providing the name of his supplier did not raise defendant's situation to the "exceptional" level. See *Fields*, *supra* at 68, and *Johnson*, *supra* at 172-173. The trial court abused its discretion in departing from the mandatory minimum sentences.

Defendant's sentences for delivery of 50 to 224 grams of cocaine are reversed, and the case is remanded for resentencing in accordance with this opinion. We do not retain jurisdiction.

/s/ Patrick M. Meter
/s/ Janet T. Neff
/s/ Peter D. O'Connell