

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

MICHAEL WINTERS,

Defendant-Appellee.

UNPUBLISHED

December 11, 2001

No. 226454

Wayne Circuit Court

LC No. 99-005911

Before: Zahra, P.J., and Smolenski and Talbot, JJ.

PER CURIAM.

The prosecution appeals by delayed leave granted, challenging the trial court's decision to sentence defendant to three to twenty years' imprisonment on his plea-based conviction of possession of 50 or more, but less than 225 grams of cocaine, MCL 333.7403(2)(a)(iii). We reverse and remand.

While on bond awaiting sentencing in connection with a federal drug charge,¹ defendant was found in possession of over 50, but less than 225 grams of cocaine. Defendant pleaded guilty to violation of MCL 333.7403(2)(a)(iii). That conviction carried a statutory minimum term of ten years' imprisonment. However, the sentencing guidelines indicated a minimum term of three to five years in prison. At sentencing, the trial court stated on the record that it was "using the guidelines for the purpose of assisting [it] in determining if there are compelling and substantial reasons" for departing from the statutorily mandated minimum sentence. The court ultimately determined that compelling and substantial reasons warranted departure and sentenced defendant to three to twenty years' imprisonment, to be served consecutive to the sentence imposed in defendant's federal case.²

A sentencing court may depart from a minimum term of imprisonment prescribed by the controlled substances act if it finds on the record that there are "substantial and compelling reasons to do so." MCL 333.7403(3); *People v Northrop*, 213 Mich App 494, 499; 541 NW2d

¹ The record indicates that defendant was convicted in federal court of conspiracy with intent to deliver cocaine and marijuana.

² Apparently, defendant was sentenced in connection with the federal case to ninety days in prison, plus four years' supervised release.

275 (1996). Substantial and compelling reasons must be based on objective and verifiable factors. *People v Fields*, 448 Mich 58, 68-69; 528 NW2d 176 (1995). Only in exceptional cases should a sentencing judge deviate from the minimum prison terms mandated by statute. *People v Daniel*, 462 Mich 1, 7; 609 NW2d 557 (2000), citing *Fields*, *supra*. We review for an abuse of discretion a trial court's determination regarding whether substantial and compelling reasons exist to support departure from a statutorily mandated minimum sentence. *People v Nunez*, 242 Mich App 610, 617; 619 NW2d 550 (2000).

In *People v Izarraras-Placante*, __ Mich App __; __ NW2d __ (Docket No. 222707, issued 6/19/01), this Court had occasion to consider whether a disparity between a minimum sentence prescribed by the controlled substances act, MCL 333.7101, *et seq.*, and a minimum sentence under the recently codified sentencing guidelines, see MCL 777.1 *et seq.*, may be considered a substantial and compelling reason to depart from the mandatory statutory minimum. Construing the statutes together, this Court held:

[I]t is inappropriate to rely on the recommended minimum sentence under the guidelines as a substantial and compelling reason to depart from the mandatory minimum terms prescribed by the statute. Instead, we reconcile these statutory provisions by concluding that only in cases where substantial and compelling reasons exist to warrant a departure may the court then consider the guidelines in determining the magnitude of the departure. [*Id.* at slip op p 5.]

In the present case, the trial court plainly relied on the recommended minimum guideline sentence as a substantial and compelling reason to depart from the statutorily mandated ten-year sentence. We conclude that such reliance constituted an abuse of the court's discretion. *Id.*

Furthermore, we have reviewed the trial court's remaining reasons for departure and conclude that none of those reasons, either alone or in combination with the others, warrant deviation from the statutorily mandated minimum sentence. This is not an exceptional case demanding departure from the statutory minimum prison term. *Daniels*, *supra*; see *People v Pearson*, 185 Mich App 773, 778-779; 462 NW2d 839 (1990). Defendant was employed as a Detroit police officer at the time he was arrested on the federal charge. The trial court noted that defendant's father was also a police officer. The court's reliance on defendant's "good family support" as a reason supporting departure was misplaced. See *People v Trancoso*, 187 Mich App 567, 581 (McDonald, P.J., dissenting); 468 NW2d 287 (1991) (stating "Defendant's substantial family support is a credit to his family, not the defendant."). Moreover, we find nothing exceptional about defendant's educational background that includes graduation from high school and two years of college, defendant's support of his wife and one child, or his involvement in his church and Bible studies. Finally, there is insufficient support in the record to reasonably conclude that defendant's claimed cooperation with federal authorities constitutes a substantial and compelling reason for departure.

Accordingly, we vacate defendant's sentence and remand for resentencing. There being no substantial and compelling reason for departure from the statutorily mandated minimum sentence, the trial court shall sentence defendant utilizing the minimum ten-year term. MCL 333.7403(2)(a)(iii); MCL 333.7403(3).

Reversed and remanded. We do not retain jurisdiction.

/s/ Brian K. Zahra

/s/ Michael R. Smolenski

/s/ Michael J. Talbot