

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DERRICK L. WILLIAMS,

Defendant-Appellant.

UNPUBLISHED

June 7, 2002

No. 231252

Wayne Circuit Court

Criminal Division

LC No. 99-012257

Before: Murphy, P.J., and Jansen and Kelly, JJ.

PER CURIAM.

Following a bench trial, defendant was convicted of possession with intent to deliver less than fifty grams of cocaine, MCL 333.7401(2)(a)(iv), and third-degree fleeing and eluding a police officer, MCL 257.602a(3). He was sentenced to concurrent prison terms of three to twenty years and three to five years, respectively. He appeals as of right. We affirm defendant's convictions, but remand for resentencing.

Defendant first argues that the prosecution presented insufficient evidence to support his conviction of possession with intent to deliver less than fifty grams of cocaine. Viewed in a light most favorable to the prosecution, the evidence was sufficient to enable a rational trier of fact to infer from the totality of the circumstances that defendant constructively possessed the cocaine up until the time the passenger in his vehicle tossed it out the window. *People v Wolfe*, 440 Mich 508, 521; 489 NW2d 748 (1992); *People v Nunez*, 242 Mich App 610, 615; 619 NW2d 550 (2000); *People v Griffin*, 235 Mich App 27, 34-35; 597 NW2d 176 (1999). Additionally, intent to deliver could be inferred from the quantity possessed and other circumstantial evidence. *Wolfe, supra* at 524-525. Alternatively, the evidence was sufficient to show that defendant aided and abetted the passenger in committing the offense. *People v Mass*, 464 Mich 615, 628; 628 NW2d 540 (2001); *People v Izarraras-Placante*, 246 Mich App 490, 495; 633 NW2d 18 (2001).

Defendant also challenges the trial court's sentencing decision, arguing that his sentences violate the principle of proportionality set forth in *People v Milbourn*, 435 Mich 630; 461 NW2d 1 (1990). As plaintiff observes, however, the legislative sentencing guidelines apply to defendant's crimes. MCL 769.34(1). Because the record does not indicate that the trial court was cognizant of the statutory standards prescribed in MCL 769.34 when sentencing defendant, we vacate defendant's sentences and remand for resentencing. MCL 769.34(11); *People v Hegwood*, 465 Mich 432; 636 NW2d 127 (2001). See also *People v Miles*, 454 Mich 90, 96; 559 NW2d 299 (1997) (a sentence is invalid when the sentencing court was laboring under a

misconception of the law), *People v Stauffer*, 465 Mich 633; ___ NW2d ___ (2002) (discussing the applicability of intermediate sanctions under MCL 769.34(4)), and *Izarraras-Placante*, *supra* at 497-499 (discussing the applicability of the legislative sentencing guidelines to an offense that is subject to a mandatory determinant penalty). To preserve the appearance of justice, we also order that defendant be resentenced by a different trial judge. *People v Pillar*, 233 Mich App 267, 270-271; 590 NW2d 622 (1998).

Defendant's convictions are affirmed. We remand for resentencing before a different trial judge. Jurisdiction is not retained.

/s/ William B. Murphy

/s/ Kathleen Jansen

/s/ Kirsten Frank Kelly