

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

V

VALERIE ROBISONBROWN, a/k/a VALERIE
ANN ROBINSON-BROWN, a/k/a VALERIE
ANN ROBISON-BROWN,

Defendant-Appellee.

UNPUBLISHED
December 4, 2003

No. 241657
Oakland Circuit Court
LC No. 00-172150-FH

Before: Cooper, P.J., and Markey and Meter, JJ.

PER CURIAM.

Defendant pleaded guilty to delivery of 50 grams or more but less than 225 grams of cocaine, MCL 333.7401(2)(a)(iii), and was sentenced to a prison term of one to twenty years. The prosecutor appeals defendant's sentence by delayed leave granted. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

At the time defendant committed the instant offense, it was punishable by a prison sentence of "not less than 10 years nor more than 20 years." MCL 333.7401(2)(a)(iii). The statute authorized the court to "depart from the minimum term of imprisonment . . . if the court finds on the record that there are substantial and compelling reasons to do so." MCL 333.7401(4). Substantial and compelling reasons for departure exist only in exceptional cases. *People v Fields*, 448 Mich 58, 68; 528 NW2d 176 (1995). And "only objective factors that are capable of verification may be used to assess whether there are substantial and compelling reasons to deviate from the minimum term of years imposed by the Legislature for certain drug offenses." *People v Daniel*, 462 Mich 1, 6; 609 NW2d 557 (2000). Appropriate objective factors include: "(1) whether there are mitigating circumstances surrounding the offense, (2) whether the defendant has a prior record, (3) the defendant's age, (4) the defendant's work history, and (5) factors that arise after the defendant's arrest such as the defendant's cooperation with law enforcement officials." *People v Johnson (On Remand)*, 223 Mich App 170, 173; 566 NW2d 28 (1997).

A trial court's determination regarding the existence of a particular factor for departure is reviewed on appeal under the clearly erroneous standard. *Id.* at 174, n 2. The determination that a particular factor is objective and verifiable is reviewed by this Court as a matter of law. *Fields*, *supra* at 77-78. Whether a trial court's departure from the mandatory minimum sentence is

justified by substantial and compelling reasons is reviewed for an abuse of discretion. *People v Nunez*, 242 Mich App 610, 617; 619 NW2d 550 (2000).

After reviewing the record, it does not appear that the trial court's reasons for departure were clearly erroneous. The record supports the trial court's findings regarding defendant's lack of a criminal history and her clean record since being placed on probation. While the Presentence Report indicates that defendant was unemployed at the time of sentencing, there was testimony that defendant was taking medical insurance billing classes at home and that she was doing nail design out of her home. Nevertheless, the trial court's statement that it was relying on defendant's work history to the extent it could, indicates that the trial court was aware of this discrepancy and did not place undue weight on defendant's work history.¹

On these facts, we cannot say that the trial court abused its discretion in concluding that a departure from the statutory sentencing guidelines was warranted in this case. Given that this case has already been remanded to the trial court once for resentencing, we believe it would be a waste of judicial resources to remand a second time for the trial court to restate its reasons for departure in greater detail.

Affirmed.

/s/ Jessica R. Cooper
/s/ Jane E. Markey

¹ We note that defendant was married with three children and one stepchild at the time of sentencing. This may explain why she did not have a stable work history outside the home and failed to provide evidence that she had a source of income independent from her husband.