

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DENNIS LEROY WALLACE,

Defendant-Appellant.

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UNPUBLISHED

June 10, 2004

No. 246725

Oakland Circuit Court

LC No. 02-183900-FH

Before: Sawyer, P.J., and Gage and Owens, JJ.

MEMORANDUM.

Defendant appeals as of right his sentence of ten to forty years in prison imposed on his conviction of possession with intent to deliver 50 grams or more but less than 225 grams of cocaine, MCL 333.7401(2)(a)(iii). We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

At the time of sentencing, the offense of possession with intent to deliver 50 grams or more but less than 225 grams of cocaine carried a mandatory sentence of not less than ten nor more than twenty years in prison. The trial court declined to depart downward from the mandated minimum term and sentenced defendant as a third habitual offender, MCL 769.11(1)(a), to ten to forty years in prison, with credit for 257 days.

At the time of sentencing in this case, a trial court could depart from a mandatory minimum term if it found on the record that substantial and compelling reasons existed to do so. MCL 333.7401(4). A substantial and compelling reason must be objective and verifiable, and must irresistibly hold the attention of the court. *People v Fields*, 448 Mich 58, 67; 528 NW2d 176 (1995). Appropriate factors for consideration include: (1) mitigating circumstances surrounding the offense; (2) the defendant's prior record; (3) the defendant's age; (4) the defendant's work history; and (5) post-arrest events, such as the defendant's cooperation with law enforcement officials. *People v Daniel*, 462 Mich 1, 7; 609 NW2d 557 (2000). We review the trial court's determination of the existence of a substantial and compelling reason for departure for clear error, the determination that the reason is objective and verifiable for error, and the determination that the reason constituted a substantial and compelling reason to depart from a mandated term for an abuse of discretion. *Fields, supra*, 77-78.

Factors cited by defendant as supporting a departure, including his age and work history, were objective and verifiable and appropriate for consideration. *Daniel, supra*. However,

defendant's age, thirty-six, was not exceptional and did not support a downward departure from the mandated minimum term. His employment history was not exceptional. No mitigating circumstances surrounded the offense, and no evidence showed that defendant cooperated with law enforcement officials following his arrest. Other factors cited by defendant, including family support and his attainment of a college degree, do not warrant departure. *Fields, supra*, 67. No substantial and compelling reasons existed to depart downward from the minimum term. *Id.*, 78.

Affirmed.

/s/ David H. Sawyer

/s/ Hilda R. Gage

/s/ Donald S. Owens