STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

MARCUS DUVALL, a/k/a ANTHONY BASS, a/k/a THEODORE ANTHONY BASS,

Defendant-Appellant.

UNPUBLISHED
June 17, 2004

No. 246094
Wayne Circuit Court
LC No. 01-013280

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

MARCUS DUVALL,

Defendant-Appellant.

No. 246095
Wayne Circuit Court
LC No. 01-013279

Before: Neff, P.J., and Zahra and Murray, JJ.

PER CURIAM.

In these consolidated cases, defendant appeals as of right from nonjury convictions of three counts of possession with intent to deliver 650 grams or more of cocaine, MCL 333.7401(2)(a)(i), and possession of a firearm during the commission of a felony, MCL 750.227b. He was later sentenced to life in prison on the controlled substance convictions and the mandatory two-year term for felony-firearm. We affirm. These appeals are being decided without oral argument pursuant to MCR 7.214(E).

It appears from the record that defendant was arrested on October 7, 1991, after he delivered a kilogram of cocaine to another person. Another kilogram of cocaine was also found in defendant's car. Defendant was charged in federal court with conspiracy to possess with intent to distribute cocaine between January 1, 1990 and February 1, 1993, and with possession with intent to distribute cocaine on October 7, 1991. He was later charged in the Wayne Circuit Court with possession with intent to deliver 650 grams or more, predicated on the same incident. As part of a plea agreement, defendant pleaded guilty in federal court to the conspiracy charge

only and the possession charge was dismissed. Defendant then moved to dismiss the state court charges, contending that prosecution was barred by the constitutional prohibition against double jeopardy and by MCL 333.7409. The trial court denied the motion. We review double jeopardy issues de novo on appeal. *People v Mackle*, 241 Mich App 583, 592; 617 NW2d 339 (2000).

The United States and Michigan Constitutions both preclude double jeopardy. US Const, Am V; Const 1963, art 1, § 15. We find that the state prosecution was not barred on double jeopardy grounds. Defendant's federal conviction was for conspiracy to commit a controlled substance offense, whereas his state convictions were for the controlled substance offense itself. "[A] substantive crime and a conspiracy to commit that crime are not the same offense for double jeopardy purposes." *People v Mezy*, 453 Mich 269, 276 (Weaver, J.); 551 NW2d 389 (1996). See also *People v Nutt*, ___ Mich ___; 677 NW2d 1 (2004). Although defendant was charged in federal court with the underlying controlled substance offense, that charge was dismissed as part of a plea bargain. "Jeopardy does not attach to charges dismissed as part of a plea agreement." *Id*.

MCL 333.7409 provides, "If a violation of this article is a violation of a federal law or the law of another state, a conviction or acquittal under federal law or the law of another state for the same act is a bar to prosecution in this state." The statute does not bar a state prosecution for commission of a controlled substance offense following a federal conviction of conspiracy to commit a controlled substance offense. *People v Zubke*, 469 Mich 80; 664 NW2d 751 (2003).

Affirmed.

/s/ Janet T. Neff
/s/ Brian K. Zahra
/s/ Christopher M. Murray