

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

ANTONIO SAMUEL-DWAYN CRAWFORD,

Defendant-Appellee.

UNPUBLISHED
November 9, 2004

No. 249261
Muskegon Circuit Court
LC No. 02-048550-FH

Before: Murray, P.J., and Sawyer and Smolenski, JJ.

MEMORANDUM.

Plaintiff appeals by leave granted the concurrent sentences of eight months' to twenty-four years' imprisonment imposed on defendant's two plea-based convictions of possession with intent to deliver less than fifty grams of cocaine, MCL 333.7401(2)(a)(iv). We reverse and remand for resentencing on those offenses. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiff's only issue on appeal is that the trial court erred in not sentencing defendant pursuant to the version of MCL 333.7401(3) that was in effect at the time the offenses were committed. Prior to March 1, 2003, MCL 333.7401(3) provided that a term of imprisonment imposed under MCL 333.7401(2)(a) "*shall* be imposed to run consecutively with any term of imprisonment imposed for the commission of another felony." The term "another felony" included any felony for which a sentence was imposed either before or simultaneously with the controlled substance offense felony for which the defendant was sentenced. *People v Morris*, 450 Mich 316, 336-337; 537 NW2d 842 (1995). 2002 PA 665, effective March 1, 2003, amended MCL 333.7401(3) to provide that a term of imprisonment imposed under MCL 333.7401(2)(a) "*may* be imposed to run consecutively with any term of imprisonment imposed for the commission of another felony."

The offenses of which defendant pleaded guilty occurred on February 23, 2003. The trial court evaluated the case pursuant to *People v Cobbs*, 443 Mich 276; 505 NW2d 208 (1993), concluded that as a matter of law the amended version of MCL 333.7401(3) was entitled to retroactive effect, and sentenced defendant as a second habitual offender, MCL 769.10, to concurrent terms of eight months' to twenty-four years' imprisonment for the two cocaine

convictions and to a consecutive term of six months' to six years' imprisonment for possession with intent to deliver marijuana, MCL 333.7401(2)(d)(iii).¹

The determination whether a statute should be applied retroactively is an issue of law that we review de novo. *People v Thomas*, 260 Mich App 450, 458; 678 NW2d 631 (2004). The amended version of MCL 333.7401(3) enacted by 2002 PA 665 applies only to offenses committed on or after March 1, 2003. *People v Doxey*, 263 Mich App 115, 122; ___ NW2d ___ (2004), lv pending. This case is binding precedent. MCR 7.215(J)(1). Therefore, the trial court erroneously applied the version of MCL 333.7401(3) in effect at the time of sentencing, rather than at the time the offenses were committed, when it imposed concurrent terms of imprisonment for defendant's cocaine convictions. We reverse defendant's sentences for those offenses and remand for resentencing on those convictions in accordance with the version of MCL 333.7401(3) in effect on the date the offenses occurred.

Reversed and remanded. We do not retain jurisdiction.

/s/ Christopher M. Murray

/s/ David H. Sawyer

/s/ Michael R. Smolenski

¹ The trial court did not impose the minimum one-year sentence mandated by the version of MCL 333.7401(2)(a)(iv) in effect at the time the cocaine offenses were committed.