

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DARCY ANN SCHMITZ,

Defendant-Appellant.

UNPUBLISHED

November 18, 2008

No. 283226

Manistee Circuit Court

LC No. 06-003691-FH

Before: Beckering, P.J., and Borrello and Davis, JJ.

PER CURIAM.

Defendant appeals by delayed leave granted from the sentence of 17 months to eight years imposed on her plea-based conviction of possession of less than 25 grams of Methadone, MCL 333.7403(2)(a)(v). For the reasons set forth in this opinion, we affirm. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

Defendant was charged with aiding and abetting the delivery of less than 50 grams of a mixture containing Methadone, MCL 333.7401(2)(a)(iv). On April 19, 2006, defendant pleaded guilty to possession of less than 25 grams of methadone in exchange for dismissal of the original charge. Defendant indicated that she understood that because she had a prior controlled substance conviction,¹ the maximum sentence for her conviction offense could be increased from four to eight years in prison.

On June 19, 2006, sentencing was delayed for a period of up to 12 months, during which defendant was required to undergo a substance abuse assessment, participate in a substance abuse program and submit to substance abuse testing. On March 12, 2007, that delay was then extended to up to 18 months from the time of the plea. The sentencing guidelines recommended a minimum term range of zero to nine months. At the sentencing hearing on August 6, 2007, the trial court, Manistee Circuit Judge James M. Batzer, relied on MCL 333.7413(2), and *People v Williams*, 268 Mich App 416; 707 NW2d 624 (2005), lv den 474 Mich 1119 (2006), to double defendant's minimum and maximum terms. The trial court sentenced defendant to 17 months to eight years. Defendant received credit for 13 days served in jail.

¹ Defendant was convicted of a felony possession offense, MCL 333.7401(2)(b), in August 1995.

Defendant did not object to the doubling of her sentence at the time of sentencing, and did not move to correct an invalid sentence as allowed by MCR 6.429(B). This issue is not preserved for appeal; therefore, this Court's review is for plain error. *People v Carines*, 460 Mich 750, 763-764; 597 NW2d 130, reh den 461 Mich 1205 (1999).

Defendant argues that MCL 333.7413 only allows a trial court to double the sentence of a defendant who was convicted of possession or delivery of 50 grams of a controlled substance or more (MCL 333.7403(2)(a)(ii) or (iii)). This assertion is inaccurate. Defendant in this case was convicted of possession of less than 25 grams of a controlled substance pursuant to MCL 333.7403(2)(a)(v). MCL 333.7403(2) states:

(2) A person who violates this section as to:

(a) A controlled substance classified in schedule 1 or 2 that is a narcotic drug or a drug described in section 7214(a)(iv), and:

(i) Which is in an amount of 1,000 grams or more of any mixture containing that substance is guilty of a felony punishable by imprisonment for life or any term of years or a fine of not more than \$1,000,000.00, or both.

(ii) Which is in an amount of 450 grams or more, but less than 1,000 grams, of any mixture containing that substance is guilty of a felony punishable by imprisonment for not more than 30 years or a fine of not more than \$500,000.00, or both.

(iii) Which is in an amount of 50 grams or more, but less than 450 grams, of any mixture containing that substance is guilty of a felony punishable by imprisonment for not more than 20 years or a fine of not more than \$250,000.00, or both.

(iv) Which is in an amount of 25 grams or more, but less than 50 grams of any mixture containing that substance is guilty of a felony punishable by imprisonment for not more than 4 years or a fine of not more than \$25,000.00, or both.

(v) Which is in an amount less than 25 grams of any mixture containing that substance is guilty of a felony punishable by imprisonment for not more than 4 years or a fine of not more than \$25,000.00, or both.

A trial court has the authority to double both the minimum and maximum statutory sentencing guidelines pursuant to MCL 333.7413(2). *Williams*, 268 Mich App at 423-424. MCL 333.7413(2) provides:

Except as otherwise provided in subsections (1) and (3), an individual convicted of a second or subsequent offense under this article may be imprisoned for a term not more than twice the term otherwise authorized or fined an amount not more than twice that otherwise authorized, or both.

Defendant points to MCL 333.7413(1)(b) in an attempt to contend that in order for a sentence to be doubled under MCL 333.7413(2), the conviction must be a violation of MCL 333.7403(2)(a)(ii) or (iii). However, this is simply not the case. MCL 333.7413(1) reads:

An individual who was convicted previously for a violation of any of the following offenses and is thereafter convicted of a second or subsequent violation of any of the following offenses shall be imprisoned for life and shall not be eligible for probation, suspension of sentence, or parole during that mandatory term:

- (a) A violation of section 7401(2)(a)(ii) or (iii).
- (b) A violation of section 7403(2)(a)(ii) or (iii).
- (c) Conspiracy to commit an offense proscribed by section 7401(2)(a)(ii) or (iii) or section 7403(2)(a)(ii) or (iii).

Defendant fails to differentiate MCL 333.7413(1) from MCL 333.7413(2). Defendant has mistakenly interpreted the language of MCL 333.7413(1) to require a conviction under MCL 333.7403(2)(a)(ii) or (iii) as opposed to (v), in order to double a defendant's sentence pursuant to MCL 333.7413(2). However, MCL 333.7413(1) concerns a trial court's ability to sentence a defendant to life in prison, not the ability to double a defendant's sentence, which is governed by MCL 333.7413(2).

When the language of a statute is clear and unambiguous, this Court is required to enforce the statute as it is written. *Roberts v Mecosta County Gen Hosp*, 466 Mich 57, 64; 642 NW2d 663 (2002). MCL 333.7413(2) does not require that the defendant be convicted under MCL 333.7403(2)(a)(ii) or (iii) in order for the sentence to be doubled. MCL 333.7413(2) allows the trial court to increase a defendant's sentencing guidelines by up to two times the term otherwise authorized by statute when "an individual [is] convicted of a second or subsequent offense under this article". MCL 333.7413(2). Article Seven is entitled "Controlled Substances" and the prior conviction offense relied upon falls under that article. The trial court acted in accord with MCL 333.7403(2)(a)(v), MCL 333.7413(2), and *Williams* when it sentenced defendant to 17 months to eight years in prison.

Affirmed.

/s/ Jane M. Beckering
/s/ Alton T. Davis
/s/ Stephen L. Borrello