

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

MELVIN LOUIS CASHIER,

Defendant-Appellant.

UNPUBLISHED

February 17, 2011

No. 295502

Berrien Circuit Court

LC Nos. 2009-015192-FH;

2009-015396-FH

Before: SERVITTO, P.J., and GLEICHER and SHAPIRO, JJ.

PER CURIAM.

Defendant appeals, by delayed leave granted, his convictions for two counts of delivery of cocaine less than 50 grams, MCL 333.7401(2)(a)(iv). Defendant was sentenced, as a second offender, MCL 333.7413, to 24 months to 40 years' imprisonment for each conviction, with credit for 38 days served. Because a trial court is required to score a repeat drug offender's prior record variables (PRVs) when imposing sentence under MCL 333.7413(2), we affirm.

Defendant pleaded guilty to the above charges and, after sentence was imposed, moved for resentencing on the grounds that the Michigan Supreme Court decision, *People v Lowe*, 484 Mich 718; 773 NW2d 1 (2009), prohibits a trial court (in repeat drug offender cases) from scoring prior record variables when the minimum and maximum sentences are doubled. The trial court denied the motion. Defendant now appeals that decision.

This Court reviews de novo questions of statutory interpretation. *Coblentz v City of Novi*, 475 Mich 558, 567; 719 NW2d 73 (2006). The proper application of statutory sentencing guidelines is a legal question that is also subject to de novo review. *People v Lucey*, 287 Mich App 267, 270; 787 NW2d 133 (2010).

In *Lowe*, 484 Mich at 719-720, the Michigan Supreme Court determined that MCL 333.7413(2) authorized trial courts to enhance the sentence of a defendant by doubling both the defendant's minimum and maximum sentences. The Court analyzed the plain language of MCL 333.7413(2), which states "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." The Supreme Court concluded that doubling the minimum and maximum sentence was consistent with the Legislature's authorization to imprison a defendant for an enhanced term as a repeat drug offender. *Id.* at 726. "[I]nterpreting §7413(2) to allow both the minimum and maximum

sentences to be doubled is most consistent with what is almost certainly the common understanding that a defendant who has been imprisoned for ‘twice’ his original ‘term’ will serve twice what he would have otherwise served.” *Id.* Therefore, the Supreme Court held that trial courts are authorized to double both the minimum and maximum sentences under MCL 333.7413(2). *Id.*

Before concluding, the majority addressed arguments raised by the dissent in a section labeled “Response to Dissent.” *Id.* One of the dissent’s arguments was that because the sentencing guidelines apply to defendant’s underlying offense, the sentence must be within the minimum sentence guideline range as calculated *for that offense*. *Id.* at 729-730. Recognizing that the Legislature created a specific sentencing enhancement for repeat drug offenders, the majority responded to the dissent by saying:

However, the Legislature expressly provided that the guidelines specifically apply to sentencing done pursuant to §7413(2), MCL 777.18, and implemented a specific scheme for when “the offender is being sentenced for a violation [of § 7413(2)],” MCL 777.21(4). Under this scheme, the trial court is directed to calculate the minimum sentence range based on the offense variables and offense class for the underlying felony. MCL 777.21(4). Notably, §21(4) includes no scoring for prior record variables, even though MCL 333.7413(2) only applies if a defendant has, in fact, committed a prior offense. In light of this, it seems reasonable to conclude that the Legislature, knowing that §7413(2) allowed an enhancement of the minimum sentence, intended the minimum sentence guideline range to be calculated without respect to the underlying offense’s repeat nature.

Defendant argues resentencing is necessary based on that portion of the “Response to Dissent,” which suggests that a trial court cannot consider a defendant’s PRVs when scoring the guideline range where the minimum and maximum sentences are to be doubled. Defendant argues that the trial court erred because it doubled his minimum and maximum sentences and included his PRVs in the calculation of his minimum sentence. However, the language on which defendant relies is dicta. As indicated by the *Lowe* court:

This case presents the question whether MCL 333.7413(2), by authorizing a trial court to enhance the sentence of a defendant who is a repeat drug offender to a “term not more than twice the term otherwise authorized” allows the trial court to double *both* the defender’s minimum and maximum sentences. We answer the question in the affirmative. 484 Mich at 719-720.

The *Lowe* court thus acknowledged that the very limited question before it concerned only the doubling of the sentence. Whether a repeat drug offender’s PRVs were to be scored was not an issue that was necessary for the resolution of the case. Statements and comments in an opinion concerning a rule of law or debated legal proposition that are not essential to the disposition of the case constitute obiter dicta and lack the force of a binding adjudication. *McNally v Bd of Canvassers of Wayne Co*, 316 Mich 551, 558; 25 NW2d 613 (1947). Accordingly, we find that the language relied upon by defendant is not binding and has no precedential value. *People v Borchard-Ruhland*, 460 Mich 278, 286 n 4; 597 NW2d 1 (1999).

MCL 333.7413(2) seeks to impose an enhanced sentence for repeat drug offenders. Here, if defendant's PRVs were not scored in calculating the recommended minimum sentence range, defendant's minimum sentence would be lower than if it was never "enhanced." Defendant's guidelines in this case were 0 to 17 months' imprisonment, or 0 to 34 months' imprisonment when doubled. If the PRVs were not considered when determining defendant's sentence as a repeat drug offender, defendant's guideline range would be zero to six months, or 0 to 12 months (non-prison) when doubled. Thus, defendant would serve less time as a repeat drug offender sentenced pursuant to MCL 333.7413(2) if his PRVs were not considered. This result clearly undermines the purpose and plain language of MCL 333.7413(2). Additionally, MCL 777.21(1) expressly directs a trial court to score PRVs in the calculation of the minimum sentence. Nothing in the plain language of the statute states a defendant's PRVs should not be considered in calculating the sentencing guidelines for a repeat drug offender. Accordingly, the trial court did not abuse its discretion in denying defendant's motion for resentencing.

Affirmed.

/s/ Deborah A. Servitto
/s/ Elizabeth L. Gleicher
/s/ Douglas B. Shapiro