

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

KEVIN MICHAEL BARBER,

Defendant-Appellant.

UNPUBLISHED

November 19, 2020

No. 350011

Clinton Circuit Court

LC No. 2017-009885-FH

Before: REDFORD, P.J., and RIORDAN and TUKEL, JJ.

PER CURIAM.

Defendant was convicted after a jury trial of operating or maintaining a methamphetamine laboratory, MCL 333.7401c(2)(f), second or subsequent offense, MCL 333.7413(1), and manufacturing methamphetamine, MCL 333.7401(2)(b)(i), second or subsequent offense, MCL 333.7413(1), and he was sentenced to serve concurrent prison terms of 5 to 40 years. In defendant's initial appeal, we affirmed the conviction of operating or maintaining a methamphetamine laboratory, but we vacated the conviction and sentence for manufacturing methamphetamine and remanded for resentencing on the remaining conviction. *People v Barber*, unpublished per curiam opinion of the Court of Appeals, issued May 14, 2019 (Docket No. 342517). Defendant was resentenced to serve a prison term of 4 to 40 years. Defendant again appeals by right. We affirm.

Defendant was charged with operating or maintaining a methamphetamine laboratory (Count I) and manufacturing methamphetamine (Count II) after police discovered in defendant's motel room every piece of equipment and all but one ingredient needed to manufacture methamphetamine. At the preliminary examination, only Count I was addressed, and defendant was bound over to the circuit court on only that charge. However, the prosecutor filed a felony information containing both counts. Following a jury trial, defendant was convicted of both offenses and sentenced to serve concurrent prison terms of 5 to 40 years for each conviction.

Defendant appealed and we affirmed his conviction on Count I, but vacated his conviction and sentence on Count II because defendant was never properly bound over for trial on that charge. Because some of defendant's prior record variable (PRV) scores were dependent on the vacated conviction, we remanded for resentencing on Count I. On remand, the guidelines minimum range was initially recalculated to be 30 to 50 months. However, the trial court determined that it was required to double the applicable guidelines range under MCL 333.7413(1), resulting in a range of 60 to 100 months. The trial court departed downward from this range by 12 months and resentenced defendant to a prison term of 4 to 40 years. Again, defendant appeals and he now argues that his sentence is disproportionate because the trial court applied MCL 333.7413(1) to double his minimum guidelines range when it had not done so at his original sentencing. We disagree.

We review a sentence that departs from the sentencing guidelines range for reasonableness. *People v Lockridge*, 498 Mich 358, 392; 870 NW2d 502 (2015). “[T]he proper inquiry when reviewing a sentence for reasonableness is whether the trial court abused its discretion by violating the ‘principle of proportionality’ set forth in *People v Milbourn*, 435 Mich 630, 636; 461 NW2d 1 (1990), ‘which requires sentences imposed by the trial court to be proportionate to the seriousness of the circumstances surrounding the offense and the offender.’” *People v Steanhouse*, 500 Mich 453, 459-460; 902 NW2d 327 (2017). An abuse of discretion exists when the trial court's decision falls outside the range of principled outcomes. *People v Feezel*, 486 Mich 184, 192; 783 NW2d 67 (2010).

MCL 333.7413 authorizes a sentencing court to impose a term of imprisonment of up to twice the term otherwise authorized when a defendant is convicted of a second or subsequent offense “relating to a narcotic drug, marihuana, depressant, stimulant, or hallucinogenic drug.” MCL 333.7413(1) and (4). Defendant does not dispute that he is subject to this discretionary enhancement, but argues that because the trial court did not apply the enhancement to double his minimum guidelines range at his original sentencing, doing so at resentencing resulted in a violation of the principle of proportionality. However, defendant's position is not supported by the record. At resentencing, the trial court acknowledged that it had applied MCL 333.7413 only to defendant's statutory maximum at his first sentencing. However, at resentencing, the trial court concluded that under *People v Lowe*, 484 Mich 718, 724; 773 NW2d 1 (2009), “both the minimum and maximum sentences must be doubled” if a sentencing court utilizes its discretion to impose a MCL 333.7413 sentencing enhancement. The trial court concluded that defendant's prior convictions, in combination with his sentencing offense, subjected him to application of the MCL 333.7413 sentencing enhancement for both his maximum sentence *and* minimum guidelines range. This was an appropriate application of MCL 333.7413, and the trial court acknowledged that it was not bound by the advisory guidelines range. Thus, defendant's below-guidelines sentence did not constitute an abuse of discretion or a violation of the principle of proportionality. Accordingly, we affirm.

/s/ James Robert Redford
/s/ Michael J. Riordan
/s/ Jonathan Tukel