

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

UNPUBLISHED

Plaintiff-Appellee,

v

No. 169685

LC No. 91-006412-FH

WILLIAM JOSEPH BRODEUR,

Defendant-Appellant.

Before: MacKenzie, P.J., and Saad and C.F. Youngblood*, JJ.

PER CURIAM.

On February 5, 1992, defendant pleaded guilty to delivery of less than fifty grams of cocaine, MCL 333.7401(2)(a)(iv); MSA 14.15(7401)(2)(a)(iv), and attempted delivery of marijuana, MCL 333.7401(2)(c); MSA 14.15(7401)(2)(c) and MCL 750.92; MSA 28.287, in exchange for the dismissal of a delivery of marijuana charge. In addition, the prosecutor recommended a one-year delayed sentence pursuant to MCL 771.1(2); MSA 28.1131(1)(2), and agreed to move for the dismissal of the delivery of cocaine conviction if defendant successfully completed the one-year probationary period. The recommended one-year delayed sentence was imposed on April 17, 1992.

Defendant was subsequently convicted of a felony in another county. Consequently, on April 7, 1993 his delay status was ended and he was sentenced to concurrent terms of fifty months to twenty years for the delivery of cocaine conviction and sixteen months to two years for the attempted delivery of marijuana conviction. Following sentencing, the prosecution successfully moved for resentencing on the ground that consecutive sentences should have been imposed, and defendant unsuccessfully moved to withdraw his plea. On September 23, 1993, defendant was resentenced to consecutive terms of thirty-eight months to twenty years for the delivery of cocaine conviction and twelve months to two years for the attempted delivery of marijuana conviction, with credit for 171 days served. Defendant now appeals as of right. We affirm. On appeal, defendant's sole claim is that the

*Circuit judge, sitting on the Court of Appeals by assignment.

trial court had no jurisdiction to sentence him on April 7, 1993, because that date was more than one year after he entered his guilty plea. This argument is based on the language of MCL 771.1(2); MSA 28.1131(1)(2), which at the time of defendant's conviction and sentence provided in relevant part:

[I]n an action in which the court may place the defendant on probation, the court may delay the imposing of sentence of the defendant *for a period not to exceed 1 year* for the purpose of giving the defendant an opportunity to prove to the court his or her eligibility for probation. . . . The delay in passing sentence shall not deprive the court of jurisdiction to sentence the defendant at any time during the extended period. [Emphasis added.]

We reject defendant's argument.

The statute does not indicate when the one-year period of delay begins to run. Assuming that it begins on the date that the delayed sentence is imposed, as this Court did in *People v McLott*, 70 Mich App 524; 245 NW2d 814 (1976), there was no statutory violation in this case because defendant was sentenced less than one year after the delayed sentence was imposed. Assuming that the one-year period of delay begins to run on the date the defendant was convicted, as defendant asserts and as this Court assumed in *People v Turner*, 92 Mich App 485; 285 NW2d 340 (1979), defendant has waived his claim of lost jurisdiction by failing to raise it at the motion for resentencing or at resentencing. See *People v Richards*, 205 Mich App 438; 517 NW2d 823 (1994).

Affirmed.

/s/ Barbara B. MacKenzie

/s/ Henry William Saad

/s/ Carole F. Youngblood