

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

KASSANDRA DEMYERS,

Defendant-Appellant.

UNPUBLISHED

May 21, 1996

No. 176429

LC No. 93-066260-FH

Before: Kavanagh, T.G.,* P.J., and R.B. Burns** and G.S. Allen,** JJ.

MEMORANDUM.

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 was ultimately sentenced, after a period of deferred sentencing, to five years' probation with the first year to be served in jail. She appeals as of right. We remand for resentencing. This case has been decided without oral argument pursuant to MCR 7.214(A).

Defendant's five-year probationary sentence does not violate the principle of proportionality. *People v Milbourn*, 435 Mich 630; 461 NW2d 1 (1990); *People v Reynolds*, 195 Mich App 182, 184; 489 NW2d 128 (1992); *People v Salgat*, 173 Mich App 742, 746; 434 NW2d 229 (1988). However, as noted by the prosecutor, the five-year probationary sentence is not authorized by law. MCL 333.7401(2)(a)(iv); MSA 14.15(7401)(2)(a)(iv). In the exercise of our plenary power, MCR 7.216(A)(7), we vacate the sentence and remand for resentencing at which the trial court shall impose a sentence of not less than one year and no more than twenty years' imprisonment, or lifetime probation.

*Former Supreme Court Justice, sitting on the Court of Appeals by assignment pursuant to Administrative Order 1996-3.

**Former Court of Appeals Judges, sitting on the Court of Appeals by assignment pursuant to Administrative Order 1996-3.

Remanded for resentencing. We do not retain jurisdiction.

/s/ Thomas G. Kavanagh

/s/ Robert B. Burns

/s/ Glenn S. Allen, Jr.