

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

MARK STEPHEN NICHOLS,

Defendant-Appellant.

UNPUBLISHED

June 21, 1996

No. 166981

LC No. 90-00787

Before: Young, P.J., and Holbrook, Ernst,* JJ.

PER CURIAM.

Defendant pleaded guilty to conspiracy to possess with intent to deliver greater than 225 grams but less than 650 grams of cocaine, MCL 750.157a; MSA 28.354(1) and MCL 333.7401(2)(a)(ii); MSA 14.15(7401)(2)(a)(ii). In accordance with MCL 333.7401(4); MSA 14.15(7401)(4), the lower court concluded that defendant's aid to law enforcement after entering his plea constituted a "substantial and compelling reason" to depart from the twenty year mandatory minimum sentence. Defendant was sentenced to fifteen to thirty years of imprisonment. Defendant appeals by leave granted. We affirm.

Defendant was arrested after a "reverse buy," whereby the police sell contraband drugs and arrest the purchaser. An informant arranged a meeting between defendant and an undercover officer, who posed as a drug dealer. At this meeting, defendant agreed to purchase a kilogram of cocaine from the undercover officer, but he did not have enough money to purchase a kilogram of cocaine. Several days later, defendant contacted the undercover officer and advised him that he was interested in purchasing three kilograms of cocaine and that sufficient funds were available. A meeting was arranged to exchange the cocaine and money. Defendant and one of his codefendants, who supplied the funds to purchase the cocaine, met the undercover officer in a parking lot. In this transaction, the officer asked for confirmation that the correct amount of money was there, and after receiving that confirmation, handed defendant the cocaine. Defendant handed the cocaine to his codefendant, who inspected the cocaine and then agreed to purchase it. The undercover officer then signaled other police units in the parking lot, and defendant and his codefendant were arrested.

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

On appeal, defendant argues that he was entrapped as a matter of law.¹ Defendant primarily argues that his due process rights were violated because the police violated existing law when they posed as narcotics sellers and distributed cocaine to defendant. We disagree. As a general principle, Michigan courts have held that the fact that police supply the contraband does not constitute entrapment per se; it is only one factor to be considered in determining whether there is entrapment. *People v Jamieson*, 436 Mich 61, 88; 461 NW2d 884 (1990)(Brickley, J.). In particular, this Court has rejected defendant's argument, reasoning that the entrapment defense does not deter all police abuse, but rather, is designed to deter manufacturing of crime by law enforcement. *People v Williams*, 196 Mich App 656, 665; 493 NW2d 507 (1992), lv den 443 Mich 881 (1993). Entrapment is not established simply by showing that the police provided an opportunity to commit a crime or furnished a necessary element of the crime. *People v Juillett*, 439 Mich 34, 52-53; 475 NW2d 786 (1991)(Brickley, J.); *Williams, supra*, 196 Mich App 665.

The evidence presented below establishes that defendant initially presented himself as interested in purchasing a kilogram of cocaine, and two days later, defendant contacted the undercover officer to inform him that he was ready and willing to purchase three kilograms of cocaine. Therefore, we find that defendant did not establish that the police conduct would likely induce a person, who was not ready and willing to commit crime, to engage in criminal activity, or that the police conduct was reprehensible as a matter of law. See *People v Fabiano*, 192 Mich App 523, 531-532; 482 NW2d 467, lv den 439 Mich 1002 (1992).

Defendant next argues that his sentence is disproportionate because the sentencing court failed to impose a lower sentence for additional "substantial and compelling reasons." Defendant claims that the court only gave him partial credit for his assistance to law enforcement and also failed to consider additional mitigating factors, alluding to this Court's decision in *People v Windall Hill*, 192 Mich App 102, 110-111; 480 NW2d 913 (1991). We disagree. Appellate review of sentencing decisions is limited to determining whether an abuse of discretion has occurred. *People v Poppa*, 193 Mich App 184, 187; 483 NW2d 667 (1992). As originally charged,² defendant faced a mandatory penalty of life imprisonment, MCL 333.7401(2)(a)(i); MSA 14.15(7401)(2)(a)(i). According to the plea agreement, the prosecution allowed defendant's plea to a lesser charge with dismissal of the original charges in exchange for defendant's promise to assist law enforcement. Defendant fulfilled his obligations under the plea agreement and was thus entitled to the benefit of the bargain, a penalty reduction from mandatory life imprisonment to a mandatory minimum of twenty years of imprisonment. Compare MCL 333.7401(2)(a)(i); MSA 14.15(7401)(2)(a)(i) and MCL 333.7401(2)(a)(ii); MSA 14.15(7401)(2)(a)(ii). Nonetheless, the court commended defendant's aid to law enforcement as "extensive" and concluded that defendant was entitled to "additional consideration." The court deemed a five year reduction in sentence as "adequate compensation" for those efforts. We find defendant's sentence proportionate to the offense and the offender, *People v Milbourn*, 435 Mich 630, 636; 461 NW2d 1 (1990), and note that defendant was given sentencing consideration for his efforts by the trial court.

Still, defendant argues that there are additional mitigating factors warranting a further reduction in sentence. While a court may depart from a mandatory minimum sentence for “substantial and compelling reasons,” MCL 333.7401(4); MSA 14.15(7401)(4), those reasons must be based on “objective and verifiable factors.” *People v Fields*, 448 Mich 58, 62; 528 NW2d 176 (1995). A sentencing court’s determination that those factors constitute “substantial and compelling reasons” is reviewed for an abuse of discretion. *Fields, supra*, 448 Mich 78. We find the court properly exercised its discretion in recognizing defendant’s assistance to law enforcement to the exclusion of other factors.

Affirmed.

/s/ Robert P. Young, Jr.

/s/ Donald E. Holbrook, Jr.

/s/ J. Richard Ernst

¹ The lower court conducted a hearing on the issue of entrapment on three separate dates over the course of six months. Ultimately, defendant pleaded guilty before the court had an opportunity to conclude the hearing and render a ruling. Still, the court specifically rejected defendant’s argument that the sale of narcotics by police constituted entrapment as a matter of law. Also, when rejecting a request to disclose the informant’s identity, the court stated that no evidence had been produced indicating that the police or the informant engaged in impermissible inducement.

² Pursuant to a plea agreement, the original charges, possession of cocaine with intent to deliver an amount greater than 650 grams, MCL 333.7401(2)(a)(i); MSA 14.15(7401)(2)(a)(i), and conspiracy to possess cocaine with intent to deliver greater than 650 grams, MCL 750.157a; MSA 28.354(1) and MCL 333.7401(2)(a)(i); MSA 14.15(7401)(2)(a)(i), were dismissed.