

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

RODNEY EARL MOSS,

Defendant-Appellant.

UNPUBLISHED

September 17, 1996

No. 177990

LC No. 93-129281-FH

93-129575-FH

93-129992-FH

94-130802-FH

Before: Marilyn Kelly, P.J., and Wahls and M.R. Knoblock,* JJ.

PER CURIAM.

Defendant pleaded guilty to one count of possession with intent to deliver more than 50 grams, but less than 225 grams, of a mixture containing cocaine, second controlled substance offense, MCL 333.7401(2)(a)(iii); MSA 14.15(7401)(2)(a)(iii), and three counts of delivery of less than fifty grams of cocaine, second controlled substance offense, MCL 333.7401(2)(a)(iv); MSA 14.15(7401)(2)(a)(iv). The trial court sentenced defendant to three consecutive terms of one to forty years' imprisonment for the convictions of delivery of less than fifty grams, to be followed by a term of ten to forty years' imprisonment for the conviction of delivery of between 50 and 225 grams of cocaine. Defendant appeals as of right. We affirm.

Defendant argues that the trial court clearly erred in finding that he was not entrapped into selling cocaine to an undercover officer. We disagree.

Entrapment exists if: (1) the police engaged in impermissible conduct that would have induced a person similarly situated as the defendant, though otherwise law-abiding, to commit the crime, or (2) the police engaged in conduct so reprehensible that it cannot be tolerated by the Court. *People v Fabiano*, 192 Mich App 523, 526; 482 NW2d 467 (1992). Under the first prong of this test, the following factors are considered in determining whether governmental activity would induce criminal

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

conduct: (1) whether there existed any appeals to the defendant's sympathy as a friend; (2) whether the defendant had been known to commit the crime with which he was charged; (3) whether there were any long time lapses between the investigation and the arrest; (4) whether there existed any inducements that would make the commission of the crime unusually attractive to a hypothetical law-abiding citizen; (5) whether there were offers of excessive consideration or other enticement; (6) whether there was a guarantee that the acts alleged as crimes were not illegal; (7) whether, and to what extent, any governmental pressure existed; (8) whether there existed sexual favors; (9) whether there were any threats of arrest; (10) whether there existed any government procedures that tended to escalate the criminal culpability of the defendant; (11) whether there was police control over any informant; and (12) whether the investigation is targeted. *People v James Williams*, 196 Mich App 656, 661-662; 493 NW2d 507 (1992).

Here, there was no corroborating evidence that the officer appealed to defendant's sympathy as a friend. There was no "friendly" contact between defendant and the officer between the purchases. Defendant has been known to commit the crime with which he was charged. There was no long lapse between the investigation and the arrest, nor any inducements to defendant that would have made commission of the crime unusually attractive. Defendant knew that his actions were illegal. There was no evidence of excessive consideration, government pressures, or threats of any kind.. The evidence shows that the undercover officer merely furnished a willing defendant with the opportunity to commit the crimes. In addition, the conduct of the police officer -- calling defendant's pager, ordering drugs, meeting defendant, and paying for the drugs -- was not so reprehensible that it cannot be tolerated by this Court. The trial court did not clearly err in finding that defendant was not entrapped. *Fabiano*, *supra*, pp 525-526.

Defendant argues that the trial court abused its discretion where there were substantial and compelling reasons to deviate from the statutory minimum sentence. We disagree. The fact that defendant was remorseful is not a substantial and compelling reason to justify a downward departure from a statutory minimum sentence. *People v Fields*, 448 Mich 58, 69; 528 NW2d 176 (1995). Although defendant had children and worked at other employment, he also had a prior record and was on probation at the time of the instant offenses. The trial court did not abuse its discretion in determining that the objective and verifiable factors present in this case did not constitute substantial and compelling reasons to depart from the statutory minimum sentence. *Id.*, p 78; *People v Catanzarite*, 211 Mich App 573, 584; 536 NW2d 570 (1995).

Finally, defendant argues that the trial court erred in imposing consecutive sentences. We disagree. This argument was recently rejected by the Michigan Supreme Court. *People v Morris*, 450 Mich 316, 326, 328-329; 537 NW2d 842 (1995).

Affirmed.

/s/ Marilyn Kelly

/s/ Myron H. Wahls

/s/ M. Richard Knoblock