

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

DAVID ALLEN WASHBURN,

Defendant-Appellee.

UNPUBLISHED

October 1, 1996

No. 185141

LC Nos. 93-129865-FH;

94-132405-FH

Before: J.H. Gillis, P.J., and G.S. Allen and J.B. Sullivan, JJ.*

MEMORANDUM.

In LC No. 93-129865-FH, defendant pleaded guilty to possession with intent to deliver 50 grams or more but less than 225 grams of cocaine, MCL 333.7403(2)(a)(iii); MSA 14.15(7403)(2)(a)(iii), possession of a short-barreled shotgun, MCL 750.224b; MSA 28.421(2), possession of marijuana, MCL 333.7403(2)(d); MSA 14.15(7403)(2)(d), and habitual offender, second offense, MCL 769.10; MSA 28.1082. For those convictions, he was sentenced to a single enhanced term of six to thirty years' imprisonment. In LC No. 94-132405-FH, defendant pleaded guilty to possession with intent to deliver less than fifty grams of cocaine, MCL 333.7403(2)(a)(iv); MSA 14.15(7403)(2)(a)(iv), and possession of marijuana, MCL 333.7403(2)(d); MSA 14.15(7403)(2)(d), and was sentenced to lifetime probation. Plaintiff appeals as of right. We affirm the sentence in LC No. 94-132405-FH, but remand to the trial court for findings of fact in LC No. 93-129865-FH. These cases have been decided without oral argument pursuant to MCR 7.214(E)(1)(b).

We affirm the sentence in LC No. 94-132405-FH because it was not necessary for the trial court to find substantial and compelling reasons in sentencing defendant to lifetime probation for possession with intent to deliver less than fifty grams of cocaine, MCL 333.7401(2)(a)(iv); MSA 14.15(7401)(2)(a)(iv). See *People v Martinez*, 448 Mich 869; 530 NW2d 748 (1995). Further, the trial court's imposition of the statutorily prescribed minimum sentence of lifetime probation was not an

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

abuse of discretion. *People v Milbourn*, 435 Mich 630, 635-636, 650-651; 461 NW2d 1 (1990); *People v Williams*, 189 Mich App 400, 404; 473 NW2d 7271 (1991).

However, in LC No. 93-129865-FH, our review of the sentencing transcript reveals that the trial court failed to make findings on the record that there were substantial and compelling reasons for a sentence departure. MCL 333.7401(4); MSA 14.15(7401)(4); *People v Fields*, 448 Mich 58, 67-69, 76-78; 528 NW2d 176 (1995). Because the trial court did not find on the record substantial and compelling reasons to deviate from the statutory minimum and because it is not clear whether the trial court would have adopted all or some of defendant's reasons for departing from the statutory minimum sentence, we remand the matter to the trial court with directions to make actual findings of fact in LC No. 93-129865-FH. See *Fields, supra*, p 80, where the Court noted that "[s]entencing normally is not a job for the appellate court, the usual procedure being to send the case back to the trial judge for resentencing if it is found that the sentence is in some respect deficient." On remand, the trial court should also correct the Judgments of Sentence to indicate that the sentences are to be served consecutively pursuant to MCL 333.7401(3); MSA 14.15(7401)(3).

Affirmed in part and remanded in part for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ John H. Gillis

/s/ Glenn S. Allen, Jr.

/s/ Joseph B. Sullivan