STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

SCOTTY LEE GAPONIK,

Defendant-Appellee.

UNPUBLISHED
October 1, 1996

No. 185144
LC Nos. 94-135958-FH;
94-135959-FH;
94-135960-FH;
94-136042-FH

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

MEMORANDUM.

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), in LC Nos. 94-135958-FH, 94-135960-FH and 94-136042-FH, 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), in LC Nos. 94-135959-FH and 94-135960-FH, and possession with intent to deliver marijuana, MCL 333.7403(2)(c); MSA 14.15(7403)(2)(c), in LC No. 94-136042-FH. Defendant was sentenced to lifetime probation on each of the three convictions for possession with intent to deliver less than fifty grams of cocaine, consecutive terms of 7-1/2 to 20 years' imprisonment on each of the two convictions for possession with intent to deliver between 50 and 225 grams of cocaine, as well as a concurrent term of two to four years' imprisonment on the conviction for possession with intent to deliver marijuana. Plaintiff appeals as of right. We affirm the sentences of lifetime probation for possession with intent to deliver less than 50 grams of cocaine, but remand to the trial court to make findings of fact on whether there were substantial and compelling reasons for departing from the mandatory minimum sentences imposed for the two convictions for possession with intent to deliver between 50 and 225 grams of cocaine. On

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

remand, the trial court should also correct the Judgments of Sentence in all the cases, except LC No. 94-135959-FH, to reflect the sentences actually imposed by the trial court at sentencing and to reflect that credit for time served is awarded against the first consecutive sentence to be served. These cases have been decided without oral argument pursuant to MCR 7.214(E)(1)(b).

First, we affirm the sentences of lifetime probation for possession with intent to deliver less than fifty grams of cocaine in LC Nos. 94-135958-FH, 94-135960-FH, and 94-136042-FH, because it was not necessary for the trial court to find substantial and compelling reasons for imposing these sentences. See *People v Martinez*, 448 Mich 869 (1995). Further, the trial court's imposition of the statutorily prescribed minimum sentences of lifetime probation was not an 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 727l (1991).

However, with regard to the sentences for possession with intent to deliver between 50 and 225 grams of cocaine in LC Nos. 94-135959-FH and 94-135960-FH, our review of the sentencing transcript reveals that the trial court failed to make any findings on the record that there were substantial and compelling reasons for departing from the mandatory minimum sentences. 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 sentences 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 sentences, we remand to the trial court with directions to make actual findings of fact in these cases. 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."

Finally, we note that the trial court erred in awarding credit for the time served against the consecutive sentences imposed in these cases. *People v Alexander (After Remand)*, 207 Mich App 227, 229; 523 NW2d 653 (1994); *People v Watts*, 186 Mich App 686, 687; 464 NW2d 715 (1991); *People v Winchell*, 143 Mich App 164, 169; 371 NW2d 514 (1985). On remand, the trial court should correct the Judgments of Sentence to reflect that credit for time served is awarded against the first consecutive sentence to be served. In addition, on remand, the trial court should correct the Judgments of Sentence to reflect the sentences actually imposed by the trial court at sentencing. MCR 7.216(4).

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