

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

STEVEN MARK HARRIS,

Defendant-Appellant.

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UNPUBLISHED  
October 25, 1996

No. 188099  
LC Nos. 94-001858-FH;  
94-002086-FH

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

MEMORANDUM.

Defendant pleaded guilty to delivery of 50 grams or more but less than 225 grams of cocaine, MCL 333.7401(2)(a)(iii); MSA 14.15(7401)(2)(a)(iii), and delivery of less than fifty grams of cocaine, MCL 333.7401(2)(a)(iv); MSA 14.15(7401)(2)(a)(iv). For those respective convictions, he was sentenced to consecutive terms of six to twenty years' imprisonment and one to twenty years' imprisonment, to also be served consecutively to other sentences that he was already serving. He appeals as of right. We remand for resentencing on the maximum terms only. This case has been decided without oral argument pursuant to MCR 7.214(A).

The trial court erroneously stated that it had no discretion to sentence defendant to terms of years less than the statutory maximum. A sentence is invalid where a sentencing court fails to exercise its discretion because it is laboring under a misconception of the law. *People v Whalen*, 412 Mich 166, 169-170; 312 NW2d 638 (1981). Defendant is therefore entitled to resentencing on the maximum terms of his sentences only. *People v Green*, 205 Mich App 342, 346; 517 NW2d 782 (1994); *People v Ash*, 128 Mich App 265, 269; 340 NW2d 646 (1982); *People v Daniels*, 69 Mich App 345, 350; 244 NW2d 472 (1976); *People v Mauch*, 23 Mich App 723, 730; 179 NW2d 184 (1970).

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

Remanded for resentencing in accordance with this opinion. We do not retain jurisdiction.

/s/ John H. Gillis

/s/ Glenn S. Allen, Jr.

/s/ Joseph B. Sullivan