

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ROBERT LEE,

Defendant-Appellant.

UNPUBLISHED

March 14, 1997

No. 183182

Ionia Circuit Court

LC No. 94-S-10196-FH

Before: Taylor, P.J., and Gribbs and R. D. Gotham,* JJ.

PER CURIAM.

Defendant pled guilty to inmate in possession of marijuana, MCL 800.281(4); MSA 28.1621(4), and was sentenced to a consecutive term of one to five years. We affirm.

At defendant's plea hearing, before the trial court accepted defendant's plea, defense counsel noted on the record that defendant intended to raise a defense of selective prosecution prior to sentencing. Neither the trial court nor the prosecutor responded to counsel's statement. Defendant's motion to dismiss for selective prosecution was filed some time before sentencing. At the sentencing hearing, the trial court advised defendant that his defense had been waived by his plea of guilty.

On appeal, defendant contends that a claim of selective or vindictive prosecution is not waived by a guilty plea. We need not address this issue because, in this case, defendant failed to make the necessary threshold showing on his claim. *US v Armstrong*, 517 US ___; 116 S Ct 1480; 134 L Ed 2d 687 (1996). The standard for such a claim is demanding, and there is a presumption that the showing to support a claim of selective prosecution "should itself be a significant barrier to the litigation of insubstantial claims." *Id*, L Ed 2d at 698. Courts are properly hesitant to examine the decision whether to prosecute:

Judicial deference to the decisions of these executive officers rests in part on an assessment of the relative competence of prosecutors and courts....'Examining the

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

basis of a prosecution delays the criminal proceedings, threatens to chill law enforcement by subjecting the prosecutor's motive and decisionmaking to outside inquiry, and may undermine prosecutorial effectiveness by revealing the Government's enforcement policy.' [*Id.*, citations omitted.]

Here, defendant has not made the requisite credible showing of different treatment of similarly situated persons. *Id.*, L Ed 2d at 702. Compare also *People v Ryan*, 451 Mich 30, 36; 545 NW2d 612 (1996). It is not enough for defendant to present "hearsay and reported personal conclusions based on anecdotal evidence" as he does in this case. *Armstrong, supra*, Ed 2d at 702.

Affirmed.

/s/ Clifford W. Taylor

/s/ Roman S. Gibbs

/s/ Roy D. Gotham