

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

UNPUBLISHED

March 18, 1997

Plaintiff-Appellee/Cross-
Appellant,

v

No. 188424

Oakland Circuit Court

LC No. 91-107787 FH

STEVEN DUANE DENT,

Defendant-Appellant/Cross-
Appellee.

Before: Taylor, P.J., McDonald and C. J. Sindt,* JJ.

PER CURIAM.

Defendant pleaded guilty to possession with intent to deliver less than fifty grams of cocaine, MCL 333.7401(2)(a)(iv); MSA 14.15(7401)(2)(a)(iv), fleeing and eluding a police officer, MCA 750.479a; MSA 28.747(1), resisting and obstructing a police officer, MCL 750.479; MSA 28.747, and habitual-offender, third offense, MCL 769.11; MSA 28.1083. Defendant was sentenced pursuant to a *Cobbs*¹ agreement to concurrent terms of two to forty years for the cocaine conviction, one to four years for the fleeing and eluding conviction, and two years for the resisting and obstructing conviction. The sentences were imposed to run consecutively to a previously imposed sentence. Defendant now appeals his convictions as of right and plaintiff cross appeals defendant's sentence by leave granted. We affirm defendant's conviction, but reverse his sentence and remand.

Defendant argues that the trial court erred when it ruled that his convictions following a civil forfeiture of \$1,015 and a beeper under MCL 333.7521 *et seq*; MSA 14.15(7521) *et seq*, did not violate the double jeopardy clauses of both the United States Constitution, US Const, Am V, and the Michigan Constitution, Const 1963, art 1, § 15. The trial court correctly found that there was no violation of double jeopardy rights in this case. Double jeopardy analysis does not apply because there was no evidence presented that the instant forfeiture was so punitive in form or effect as to render it

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

criminal. *United States v Usery*, 518 US ___; 116 S Ct 2135; 135 L Ed 2d 549 (1996); *People v Acoff*, 220 Mich App 396; ___ NW2d ___ (1996).

Plaintiff correctly argues that the trial court erred in imposing concurrent sentences because consecutive sentences are mandatory under MCL 333.7401(3); MSA 14.15(7401)(3). *People v Morris*, 450 Mich 316; 537 NW2d 842 (1995). Therefore, resentencing is required. However, because the sentence was imposed pursuant to a plea agreement, on remand defendant must be given the opportunity to withdraw his plea before the trial court proceeds. *People v Cobbs*, 443 Mich 276; 505 NW2d 208 (1993); *People v Connor*, 209 Mich App 419; 531 NW2d 734 (1995).

Affirmed in part and reversed in part. Remanded for proceedings in accordance with this opinion. We do not retain jurisdiction.

/s/ Clifford W. Taylor
/s/ Gary R. McDonald
/s/ Conrad J. Sindt

¹ *People v Cobbs*, 443 Mich 276; 505 NW2d 208 (1993).