

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

GARY SCOTT CASSIDAY,

Defendant-Appellant.

UNPUBLISHED

March 25, 1997

No. 189216

Gratiot Circuit Court

LC No. 95-003004-FH

Before: McDonald, P.J., and Griffin and Bandstra, JJ.

PER CURIAM.

Defendant appeals as of right from his conviction by jury for possession with intent to deliver marijuana, MCL 333.7401(2)(c); MSA 14.15(7401)(2)(c), and his conviction pursuant to a guilty plea of habitual offender, second offense, MCL 769.10; MSA 28.1082. The trial court sentenced defendant to a term of three to six years' imprisonment, consecutive to a sentence defendant was already serving. We affirm.

Defendant first argues that his Fifth Amendment double jeopardy rights were violated when the state proceeded with a criminal prosecution after currency was seized from defendant in a civil forfeiture proceeding pursuant to MCL 333.7521; MSA 14.15(7521). In evaluating such a claim, a court must determine whether the Legislature intended the forfeiture to be civil or criminal in nature and whether, despite clear proof of legislative intent that it was intended to be civil in nature, the forfeiture proceedings were so punitive as to render them criminal. *United States v Ursery*, 518 US ___; 116 S Ct ___; 135 L Ed 2d 549, 557 (1996). This Court has previously adopted a similar standard, holding that civil forfeiture triggers double jeopardy protection only if the forfeiture imposes an additional penalty disproportionate to the offense. *People v Hellis*, 211 Mich App 634, 645; 536 NW2d 587, (1995). We find that defendant's forfeiture of \$204.52 was not so punitive as to negate the legislative intent that the forfeiture be civil or remedial in nature where defendant was potentially subject to a \$2,000 fine in addition to imprisonment for violating MCL 333.7401(2)(c); MSA 14.15(7401)(2)(c).

Defendant next argues that there was insufficient evidence to establish the element of intent to deliver. We disagree. There was evidence that the quantity of marijuana seized was large, and that

defendant was carrying a significant amount of cash, a pager and several names and telephone numbers on his person. Although defendant had plausible explanations for the cash and pager that tended to support his claim that he possessed the marijuana for his personal use only, we must view the evidence in a light most favorable to the prosecutor. We note that minimal circumstantial evidence is needed to establish intent. *People v Bowers*, 136 Mich App 284, 287; 356 NW2d 618 (1984). *People v Wolfe*, 440 Mich 508, 515; 489 NW2d 748, amended 441 Mich 1201 (1992). We conclude that there was sufficient circumstantial evidence for the jury to find that this essential element was proven beyond a reasonable doubt. *Wolfe, supra*.

Defendant also argues that the three to six year term of imprisonment is disproportionate to the offense and constitutes an abuse of discretion under *People v Milbourn*, 435 Mich 620; 461 NW2d 1 (1990). We do not agree that the sentence was disproportionate. Defendant's prior record includes six misdemeanor offenses and a prior conviction for possession with intent to deliver marijuana. Defendant was out on parole from this previous conviction when he committed the instant offense. Defendant has a history of problems stemming from his abuse of alcohol and marijuana. The sentencing court correctly characterized defendant as having failed to take advantage of previous opportunities to rehabilitate himself, which included probationary sentences. In light of this defendant's history, the sentence imposed was not an abuse of discretion.

Affirmed.

/s/ Gary R. McDonald
/s/ Richard Allen Griffin
/s/ Richard A. Bandstra