

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

SANDRA ANN GRIFFIN,

Defendant-Appellant.

UNPUBLISHED

May 2, 1997

No. 189432

Muskegon Circuit Court

LC No. 94-037592-FH

Before: Neff, P.J., and Smolenski and D. A. Roberson*, JJ.

PER CURIAM.

Defendant was convicted by a jury of delivery of fifty or more but less than 225 grams of cocaine, MCL 333.7401(1) and (2)(a)(iii); MSA 14.15(7401)(1) and (2)(a)(iii), and sentenced to a term of ten to twenty years' imprisonment. Defendant appeals as of right. We affirm.

Defendant first argues that the trial court erroneously incorporated its instruction on the delivery offense into its instruction on the conspiracy offense. Defendant claims that the trial court should have given a separate and distinct instruction on delivery. A jury's verdict will not be set aside on the ground that the trial court failed to instruct the jury on any point of law unless the defendant requested such instruction. *People v Hendricks*, 446 Mich 435, 440-441; 521 NW2d 546 (1994). Defendant did not object to the trial court's failure to give a separate delivery instruction. We therefore will not review this issue absent manifest injustice. *People v Hess*, 214 Mich App 33, 36; 543 NW2d 332 (1995).

We find no manifest injustice. In the course of instructing the jury on conspiracy to deliver, the trial court gave instructions on the offense of delivery. The jury was therefore adequately instructed on both the offenses of delivery and conspiracy. Because the instructions as given fairly presented the issues to be tried and sufficiently protected defendant's rights, we find no error in the court's failure to repeat the elements of the offense of delivery as a separate instruction. *People v Davis*, 216 Mich App 47, 54; 549 NW2d 1 (1996). We also find no prejudicial error in the trial court's reference to the offense of delivery of more than 650 grams where the jury verdict form clearly indicated that the jury did not have the option of convicting defendant of this offense.

Next, defendant argues that the trial court abused its discretion in refusing to depart from the statutory mandatory minimum sentence of ten years. A defendant convicted of delivering more than fifty but less than 225

* Recorder's Court judge, sitting on the Court of Appeals by assignment.

grams of cocaine “shall be imprisoned for not less than 10 years nor more than 20 years.” MCL 333.7401(2)(a)(iii); MSA 14.15(7401)(2)(a)(iii). The trial court may depart from the minimum term of imprisonment if it finds on the record “substantial and compelling reasons to do so.” MCL 333.7401(4); MSA 14.15(7401)(4).¹ These reasons must be objective and verifiable. *People v Perry*, 216 Mich App 277, 280; 549 NW2d 42 (1996). The finding of a particular reason or factor is reviewed according to the clearly erroneous standard. *Id.* A trial court’s determination that a factor is objective and verifiable is reviewed de novo on appeal. *Id.* The trial court’s determination whether the factor qualifies as a substantial and compelling reason to depart from the statutory minimum is reviewed for abuse of discretion. *Id.*

The trial court did not abuse its discretion in finding that defendant’s lack of a prior criminal record did not constitute a substantial and compelling reason to depart from the statutory minimum when defendant participated in a complex, ongoing effort to deliver cocaine to the Muskegon area. *People v Brake*, 208 Mich App 233, 242; 527 NW2d 56 (1995). Defendant also argues that her sentence was unjust because codefendants who agreed to cooperate with the prosecution were treated leniently. This disparity does not warrant a lighter sentence for defendant. *People v Weathington*, 183 Mich App 360, 365; 454 NW2d 215 (1990).

Affirmed.

/s/ Janet T. Neff

/s/ Michael R. Smolenski

/s/ Dalton A. Roberson

¹ Section 7401(4) was amended by 1996 PA 249, effective January 1, 1997, to also provide that, with respect to certain juveniles who commit an offense on or after the act’s effective date, the trial court may depart from the minimum term of imprisonment authorized under § 7401(2)(a)(ii), (iii) or (iv) “if the individual has not previously been convicted of a felony or an assaultive crime and has not been convicted of another felony or assaultive crime arising from the same transaction as the violation of this section.” However, the amendment is not applicable to this case because defendant committed her offense before the act’s effective date and she is not a juvenile.