

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

ISAIAS RODRIGUEZ,

Defendant-Appellee.

UNPUBLISHED

December 16, 1997

No. 187060

Oakland Circuit Court

LC Nos. 94-136746 FH

94-136747 FH

94-136748 FH

Before: O'Connell, P.J., and White and C. F. Youngblood*, JJ.

MEMORANDUM.

The Oakland Prosecutor appeals by right the imposition of three consecutive four- to twenty-year sentences, each representing a departure from the mandatory statutory minimum of ten years' imprisonment, following defendant's guilty plea to these three charges of delivery of cocaine over 50 but less than 225 grams, MCL 333.7401(2)(a)(iii); MSA 14.15(7401)(2)(a)(iii). This case is being decided without oral argument pursuant to MCR 7.214(E).

The circuit court identified, as the basis for imposing a downward departure sentence, purposeful escalation of the defendant's criminal involvement by investigating law enforcement authorities, although short of entrapment; defendant's youthful age of twenty-one; the lack of even a hint of violence, threats of violence, or involvement with firearms or other dangerous weapons by defendant; and defendant's status as other than an organizer, leader, manager or supervisor of a narcotics enterprise. The trial court also mentioned defendant's prospects for rehabilitation.

The existence or nonexistence of a particular factor is a factual determination for the sentencing court to determine and is reviewed by this Court for clear error. The determination that a particular factor is objective and verifiable is reviewed de novo as a question of law, while the trial court's determination that the objective and verifiable factors present in a particular case constitute substantial and compelling reasons to depart from the statutory minimum sentence is reviewed for abuse of discretion. *People v Fields*, 448 Mich 58, 77-78; 528 NW2d 176 (1995).

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

Here, defendant's prospects for rehabilitation are clearly not an objective and verifiable factor as a matter of law. The remaining factors identified by the trial court, however, are objective and verifiable, and the trial court's findings that such factors are extant are in no respect clearly erroneous. Accordingly, the issue for this Court is whether the trial court abused its discretion in finding these factors sufficient to constitute substantial and compelling reasons for departure, and in that respect whether the extent of the departure was an abuse of discretion.

Defendant was targeted by an undercover police officer, who apparently focused on defendant only after an informant, trading information for sentencing leniency, introduced him to defendant. Defendant's initial involvement was delivery of about half of an ounce of cocaine, then the same amount a second time, then three one-ounce quantities over a span of several weeks. This scenario is nearly indistinguishable from that in *People v Shinholster*, 196 Mich App 531; 493 NW2d 502 (1992), a decision the Supreme Court approved in *Fields, supra*, at 78-79, and this alone would warrant a departure sentence.

As to the extent of the departure, defendant, but for the consecutive sentencing resulting from the escalation of his crimes by the decision not to arrest him until the fifth, would only have been subject to a one- to twenty-year sentence or lifetime probation. The combined sentences received by defendant provide a minimum of twelve and a maximum of sixty years, which is in excess of the mandated punishment for one of the three more serious offenses. Given defendant's lack of prior criminal record, his role as a minor player in the drug trade, and his lack of involvement with violence or the potential for violence, this Court cannot say on this record that the trial court abused its sentencing discretion with respect to the extent of the departure.

Affirmed.

/s/ Peter D. O'Connell

/s/ Helene N. White

/s/ Carole F. Youngblood