

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

ENDA DALTON,

Defendant-Appellee.

UNPUBLISHED

March 24, 1998

No. 196545

Oakland Circuit Court

LC No. 92-114327-FH

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee/Cross-Appellant,

v

JUAN EUGENIO CORREA,

Defendant-Appellant/Cross-Appellee.

No. 196622

Oakland Circuit Court

LC No. 92-114326-FH

Before: Doctoroff, P.J., and Reilly and Allen*, JJ.

PER CURIAM.

Defendants Edna Dalton and Juan Correa were convicted of one count each of delivery of more than 50 grams but less than 225 grams of cocaine, MCL 333.7401(2)(a)(iii); MSA 14.15(7401)(2)(a)(iii), and conspiracy to deliver more than 50 grams but less than 225 grams of cocaine, MCL 750.157a; MSA 28.354(1). Defendant Dalton was convicted by a jury while defendant Correa pleaded guilty. Both defendants were originally sentenced to two concurrent terms of ten to twenty years' imprisonment. In prior appeals, however, defendants' sentences were vacated and the cases were remanded to the trial court for resentencing. At resentencing, the trial court departed from the statutory ten-year minimum sentence and sentenced each defendant to two consecutive terms of five

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

to twenty years' imprisonment. The prosecution appeals defendant Dalton's sentence as of right in Docket No. 196545. Defendant Correa appeals his sentences as of right in Docket No. 196622 and the prosecution has filed a cross appeal. The appeals have been consolidated for our review. We affirm in both cases.

People v Edna Dalton, Docket No. 196545

In Docket No. 196545, the prosecution first argues that this Court's prior opinion precluded the trial court from considering whether there are substantial and compelling reasons to deviate from the statutory mandatory minimum sentences for defendant Dalton. We find no merit to this argument.

In this Court's prior opinion, the panel remanded the case for resentencing for the reason that the trial court erred in not imposing consecutive sentences. In an order denying rehearing, the panel indicated that it intended to grant defendant Dalton the same relief that defendant Correa was afforded in his appeal. Defendant Correa was granted a full resentencing, including reconsideration of the issue whether there are substantial and compelling reasons for departing from the statutory mandatory minimum sentences. Furthermore, where a trial court is required to change sentences from concurrent terms to consecutive terms, a full resentencing hearing is required. *People v Thomas*, 223 Mich App 9, 12; 566 NW2d 13 (1997). Accordingly, the trial court was not foreclosed from reconsidering whether there are substantial and compelling reasons to deviate from the statutory minimum sentence in this case.

The prosecution next argues that there were not substantial and compelling reasons in this case to support the trial court's decision to deviate from the statutory minimum sentences. On this issue, we employ three standards of review. The trial court's factual determination regarding the existence of a particular factor is reviewed for clear error. *People v Fields*, 448 Mich 58, 77; 528 NW2d 176 (1995). Whether a particular factor is both objective and verifiable is reviewed as a matter of law. *Id.*, pp 77-78. The trial court's decision that the objective and verifiable factors present in a particular case provide substantial and compelling reasons to depart from the mandatory minimum sentence is reviewed for an abuse of discretion. *Id.*, p 78.

In *Fields, supra*, pp 76-77, a nonexclusive list of factors was set forth for trial courts to consider in determining if a departure is warranted. These factors include (1) whether there are mitigating circumstances surrounding the offense, (2) the defendant's prior record, (3) the defendant's age, (4) the defendant's work history, and (5) factors that arise after the defendant's arrest, such as his or her cooperation with law enforcement officials. In much of the prosecution's argument, it fails to note that the list of factors in *Fields* is nonexclusive. Thus, the fact that certain elements of this case are not exactly the same as were before the Court in *Fields* is not a reason to find error.

In explaining its decision to depart from the statutory minimum sentences, the trial court cited (1) defendant's age, (2) defendant's lack of a prior record, (3) the mitigating circumstances of this crime, and (4) defendant's conduct after her arrest. All of these factors, as a matter of law, qualify as objective and verifiable factors under *Fields, supra*.

We likewise find that the trial court's factual findings on departure are supported by the record. Defendant Dalton was thirty-nine years old at the time of the original sentencing and she had no prior record. On the facts of this case, defendant Dalton played a small role in comparison to her codefendants. She had little direct involvement in the transaction involving the eighty-two grams of cocaine that formed the basis for the underlying convictions. Finally, there was evidence in the record that, while in prison, defendant Dalton has been a model prisoner and her behavior has been extremely positive. *Fields, supra*, pp 78-79. Although the prosecution argues that defendant Dalton involved her children in drug dealing, there is no evidence in the record indicating how defendant Dalton became involved in drug dealing.

After reviewing the trial court's reasons for deviating from the statutory minimum sentences, we do not believe that the trial court abused its discretion in finding that there were substantial and compelling reasons to deviate from the statutory mandatory minimum sentences.

People v Juan Correa, Docket No. 196622

Defendant Correa argues that the trial court erred in ordering his sentences consecutive to one another under MCL 333.7401(3); MSA 14.15(7401)(3) where he was convicted of conspiracy and delivery of cocaine and both convictions arose out of the same transaction. He contends that imposing consecutive sentences on these facts violates double jeopardy principles. While this Court already addressed this issue in defendant Correa's prior appeal, this argument lacks merit in any event given the Supreme Court's recent decision in *People v Denio*, 454 Mich 691, 695-696, 709-712; 564 NW2d 13 (1997). The trial court properly made defendant's sentences consecutive in this case.

In its cross appeal, the prosecution argues that it was error for the trial court to depart from the statutory mandatory minimum sentences for defendant Correa also. We likewise find no error with defendant Correa's sentences.

The trial court also cited objective and verifiable factors in its decision on defendant Correa's sentences. These included (1) defendant's prior record, (2) defendant's work history, (3) family support, (4) the role of the law enforcement officer in escalating these crimes, and (5) that the facts of the two crimes were intertwined. *Fields, supra*, pp 76-77.

The lower court record supports the trial court's findings with regard to both defendant's prior record and his work history. Defendant Correa had two prior misdemeanor convictions for disorderly conduct. This offense involved his first serious criminal offense. He likewise had a substantial work history in his favor, although he had not completed high school.

The record is not so clear regarding family support of defendant Correa. However, we cannot say that the trial court's findings on this factor were in error. In any event, this is a factor that appears to have been given little weight by the trial court.

Finally, the record also supports the trial court's determination that the facts of this crime and defendant Correa's role involved mitigating circumstances. The facts showed that it was the undercover

officer that pursued drug sales with defendants and the officer even suggested to defendant Correa that he should cut the other codefendant out of the transactions. The officer also tried to escalate the quantity of drugs involved, but defendant Correa declined to deal in any larger amounts. Given the facts of this case as a whole, it was not error for the trial court to find that this factor favored departure from the statutory mandatory minimum sentence for defendant Correa.

The trial court did not abuse its discretion in finding that there were substantial and compelling reasons to deviate from the mandatory minimum sentences for defendant Correa.

Affirmed.

/s/ Martin M. Doctoroff

/s/ Maureen Pulte Reilly

/s/ Glenn S. Allen, Jr.