

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JOHN LOREN HUTCHINS,

Defendant-Appellant.

UNPUBLISHED

June 15, 2006

No. 259917

Jackson Circuit Court

LC No. 03-000066-FH

Before: Kelly, P.J., and Markey and Meter, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of owning or possessing laboratory equipment or chemicals for the manufacture of methamphetamine, MCL 333.7401c2a, and was ultimately sentenced after a probation violation to two to ten years' imprisonment. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant's conviction arises from an incident on January 9, 2003 when he was found in possession of methamphetamine and methamphetamine manufacturing equipment. He was initially sentenced to 180 days in jail and four years' probation. While on bond status awaiting sentencing, defendant was again found guilty in the Jackson Circuit Court of possessing methamphetamine, and was sentenced to five years' probation and ordered to be on a tether for 90 days. A short time later, defendant was brought to court on a felony warrant for operating/maintaining a methamphetamine lab on December 31, 2003. This charge was later dismissed pursuant to a plea agreement. While on probation in the instant case, defendant pleaded guilty in Van Buren County to possession of methamphetamine and methamphetamine manufacturing components. Based on those other two convictions, defendant pleaded guilty to violating his probation in this case. On November 10, 2004, defendant was sentenced to two to ten years in prison. This was a departure from the sentencing guidelines recommended minimum range of 0 to 9 months.

Defendant first argues that the trial court failed to articulate on the record a substantial and compelling reason for its departure from the sentencing guidelines. We disagree.

The trial court explicitly recognized that it was departing from the guidelines and stated that it was doing so because defendant was found to be in possession of methamphetamine and/or methamphetamine manufacturing equipment on three separate instances in violation of

his probation subsequent to his original conviction in this case. See *People v Schaafsma*, 267 Mich App 184, 186; 704 NW2d 115 (2005). Moreover, considering defendant's recidivism, his criminal record was given inadequate weight in calculating the guidelines range, thereby justifying a departure from the guidelines. *People v Babcock*, 469 Mich 247; 666 NW2d 231 (2003); *Schaafsma, supra*. Finally, the trial court noted that defendant had already received the maximum jail time for his offense and, therefore, an upward departure from the guidelines was appropriate. The trial court sufficiently articulated on the record substantial and compelling reasons for its upward departure from the statutory sentencing guidelines, resulting in a reasonable and principled outcome. *Babcock, supra* at 269.

Defendant next argues that even if the trial court's departure from the sentencing guidelines was warranted, the extent of the departure violates the rule of proportionality. We again disagree.

A sentence imposed upon a criminal defendant is reviewed for an abuse of discretion. *People v Cain*, 238 Mich App 95, 130; 605 NW2d 28 (1999). "[A] given sentence can be said to constitute an abuse of discretion if that sentence violates the principle of proportionality, which requires sentences imposed by the trial court to be proportionate to the seriousness of the circumstances surrounding the offense and the offender." *People v Milbourn*, 435 Mich 630, 636; 461 NW2d 1 (1990).

The principle of proportionality establishes the standard for determining whether a sufficient basis exists to justify a departure vis-à-vis the allegedly substantial and compelling reasons in support of the departure. *Babcock, supra* at 262. Hence, the trial court must find that departing from the guidelines due to a substantial and compelling reason results in a more proportionate sentence than a sentence within the guidelines range. *Id.* at 264.

Defendant was found in possession of methamphetamine and/or methamphetamine manufacturing equipment three times subsequent to the instant conviction and had not proven himself to be a good probationer. In light of defendant's criminal history and his repeated convictions for the same offense, we hold that his two-year minimum sentence is proportionate to the seriousness of the circumstances surrounding the offense and the offender.

Affirmed.

/s/ Kirsten Frank Kelly

/s/ Jane E. Markey

/s/ Patrick M. Meter