

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

GLEN HORN,

Defendant-Appellant.

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UNPUBLISHED  
February 21, 2003

No. 237020  
Wayne Circuit Court  
LC No. 00-012175-01

Before: O’Connell, P.J., and Fitzgerald and Murray, JJ.

PER CURIAM.

Defendant appeals as of right his sentence of ten to twenty years in prison imposed on his jury-based conviction of possession with intent to deliver more than 50 but less than 225 grams of cocaine, MCL 333.7401(2)(a)(iii). We affirm.

The offense of which defendant was convicted carries a mandated sentence of not less than ten years nor more than twenty years in prison. A sentencing court may depart from the mandated minimum term if it finds that substantial and compelling reasons exist to do so. MCL 333.7401(4). In this case the applicable statutory sentencing guidelines recommended a minimum term range of thirty to fifty months. Defendant argued that his history of steady employment and lack of prior convictions for violent offenses constituted substantial and compelling reasons for the court to depart below the mandated minimum term. The prosecutor opposed departure from the mandated minimum term on the grounds that defendant had two prior convictions for narcotics offenses,<sup>1</sup> and that he had not cooperated with the police. The court stated that if it felt it had the authority to do so in this case, it would consider departing below the mandated minimum term. However, the court concluded that to do so in this case would be an exercise in futility, and sentenced defendant to ten to twenty years in prison, with credit for fourteen days.

In most instances a trial court must impose a sentence within the calculated guidelines range. MCL 769.34(2). The sentence must comport with any mandated minimum sentence. MCL 769.34(2)(a); MCL 769.34(5). Imposition of a mandated minimum sentence does not

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<sup>1</sup> The prosecution filed a notice that it would seek sentence enhancement pursuant to MCL 769.11; however, the trial court did not sentence defendant as a habitual offender.

constitute a departure from the guidelines. *People v Izarraras-Placante*, 246 Mich App 490, 497; 633 NW2d 18 (2001). A trial court may depart from the guidelines if it finds that substantial and compelling reasons exist to do so. Substantial and compelling reasons must be objective and verifiable, and must irresistibly hold the attention of the court. *People v Babcock*, 244 Mich App 64, 75; 624 NW2d 479 (2000). A trial court may correct an invalid sentence. A sentence is invalid if it is based on a misconception of law. *People v Thenghkam*, 240 Mich App 29, 70; 610 NW2d 571 (2000).

Defendant argues he is entitled to resentencing on the ground the trial court's failure to recognize that it had the discretion to depart below the mandated minimum term constituted a mistake of law. We disagree and affirm defendant's sentence. Defendant's assertion that the trial court did not recognize it had the discretion to depart below the mandated minimum term is not supported by the record. At sentencing both parties addressed the issue of departure from the mandated minimum term. In imposing sentence the trial court stated that if it felt it had the authority to depart below the mandated minimum term "in this case" it would consider doing so, but it had concluded that to do so "in this case" would be futile. The trial court's remarks indicate the court recognized it had the discretion to depart below the mandated minimum term, but it had concluded that substantial and compelling reasons did not exist to do so in this case, and it was likely that any departure would not be upheld on appeal. The trial court's remarks reflect an awareness of the restraints on its sentencing discretion under the particular circumstances of this case, but do not support defendant's assertion that the trial court did not recognize that that discretion existed. Defendant has not established that substantial and compelling reasons existed for the trial court to depart below the mandated minimum sentence, *Babcock, supra*, and he is not entitled to resentencing.

Affirmed.

/s/ Peter D. O'Connell  
/s/ E. Thomas Fitzgerald  
/s/ Christopher M. Murray