STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED November 10, 2009
v	No. 287654 Oakland Circuit Court
MARWIN LEE CHAMBERS, Defendant-Appellant.	LC Nos. 1999-168815-FH, 2000-175041-FH

Before: Stephens, P.J., and Cavanagh and Owens, JJ.

PER CURIAM.

Defendant appeals by delayed leave granted his sentences imposed after he pleaded guilty to violating his probation. In LC No. 1999-168815-FH, the trial court sentenced defendant to concurrent prison terms of one to 20 years each for delivery of less than 50 grams of cocaine, MCL 333.7401(2)(a)(iv), and delivery of marijuana, MCL 333.7401(2)(d)(iii). These sentences were to be served consecutively to sentences defendant received in LC No. 2000-175041-FH, in which defendant was sentenced to concurrent prison terms of one to 20 years each for delivery of less than 50 grams of cocaine and delivery of less than 50 grams of marijuana. We affirm, but remand for correction of the judgments of sentence.

The basic facts and procedural history are set forth in this Court's prior opinion in *People v Chambers*, unpublished opinion per curiam of the Court of Appeals, issued February 26, 2008 (Docket No. 274249). In that matter, this Court remanded for a hearing on the probation violation allegations because the record did not show that defendant pleaded guilty to the allegations before the court sentenced him for violating his probation. On remand, defendant pleaded guilty of violating his probation by failing to obtain his GED. The trial court then stated it was sentencing defendant to "one to 20 years in the MDOC on both cases, they are consecutive." Defendant moved for resentencing, but the trial court denied defendant's motion.

Defendant argues that the trial court erred in imposing consecutive sentences because he was resentenced after the amendment of MCL 333.7401(3) by 2002 PA 665, which eliminated mandatory consecutive sentencing.[1] The applicability of the amendment to defendant presents a

[1] Effective December 26, 2002, a term of imprisonment under MCL 333.7401(2)(a) "may" be imposed to run consecutively to another term of imprisonment.

question of law, which we review de novo. *People v Doxey*, 263 Mich App 115, 118; 687 NW2d 360 (2004), lv den 472 Mich 878 (2005). Contrary to defendant's argument, the amended statutory and sentencing scheme in MCL 333.7401 applies only to offenses committed on or after March 1, 2003. *Id*., pp 122-123. Therefore, the amended statute does not apply to defendant's convictions, and the consecutive nature of the sentences does not entitle defendant to relief. The trial court therefore did not err in imposing consecutive sentences.

We also reject defendant's contention that the trial court violated his constitutional rights under *Blakely v Washington*, 542 US 296; 124 S Ct 2531; 159 L Ed 2d 403 (2004), when it departed from the 12-month maximum sentence of the intermediate sanction cell in MCL 769.34(4)(a) without a determination by a jury or admissions by defendant of substantial and compelling reasons for the departure. As explained in *People v Uphaus*, 278 Mich App 174, 178; 748 NW2d 899 (2008), lv den 482 Mich 990 (2008), cert den ___ US ___; 129 S Ct 1670; 173 L Ed 2d 1039 (2009), a trial court's departure from an intermediate sanction does not implicate *Blakely*.

The prosecutor asserts that the judgment of sentence in LC No. 2000-175041-FH should be corrected to reflect that the charge of delivery of marijuana was dismissed pursuant to the plea agreement. The transcript of the January 29, 2001, plea supports the prosecutor's contention. Defendant did not plead guilty to a marijuana charge in LC No. 2000-175041-FH, and we agree that the judgment of sentence should be corrected.

The prosecutor also notes that in LC No. 1999-168815-FH, the transcript of the March 29, 2001, sentencing proceeding indicates that the court imposed a jail term, rather than probation. The court stated:

> I'm going to place you on lifetime probation in relation to the 99-168815-FH. The delivery of marijuana is a two to 17. I'm supposed to give you at least 60 days, you have 31 days, I'll give you credit for 31. I'm suspending the balance of that sentence and deviating from the guidelines because I am putting you on lifetime probation.

According to the prosecutor, because the record does not show that the court placed defendant on probation for the marijuana conviction, the court could not impose a prison sentence following revocation of probation imposed for the other convictions. The prosecutor suggests that the judgment in LC No. 1999-168815-FH should be amended to reflect the jail sentence for the marijuana conviction that the trial court imposed orally on March 29, 2001.

Our review of the file supports the prosecutor's position. The order of probation entered by the court on May 30, 2001, in LC No. 1999-168815-FH states in part, "Sentenced to Jail only on Delivery of Marijuana." Moreover, the court's statements at the March 25, 2008, plea hearing on the revocation of probation also indicate that the court believed that the order of probation at issue concerned "two counts of delivery of a controlled substance, less than fifty grams." The judgment of sentence in LC No. 1999-168815-FH should be corrected to eliminate the one to 20 years prison sentence for the marijuana conviction and reflect the jail sentence that the court imposed in 2001. Accordingly, we remand to the trial court for the ministerial correction of the judgments of sentence in LC No. 1999-168815-FH and LC No. 2000-175041-FH. *People v Avant*, 235 Mich App 499, 521; 597 NW2d 864 (1999).

Affirmed and remanded for the ministerial task of correcting the judgments of sentence. We do not retain jurisdiction.

/s/ Cynthia Diane Stephens
/s/ Mark J. Cavanagh
/s/ Donald S. Owens