

# Court of Appeals, State of Michigan

## ORDER

People of MI v Devon Arthur Bullard

Docket No. 309233

LC No. 11-006097-01-FC

Peter D. O'Connell  
Presiding Judge

Donald S. Owens

Michael J. Kelly  
Judges

Pursuant to MCR 7.205(D)(2), in lieu of granting the delayed application for leave to appeal, the Court VACATES both defendant's plea and the September 12, 2011 order of probation. The trial court was without authority to impose a two-year prison term as a condition of probation. MCL 762.13 unequivocally provides that once a court places a juvenile on youthful trainee status, it must choose only one of the alternatives stated in subsection (1) of that statute, and none of those alternatives permit both a prison term and probation.

However, because the basis of the plea bargain was an unlawful sentence, the agreement cannot be enforced. Further, resentencing would result in either defendant receiving a higher sentence than that to which he agreed, or defendant receiving a lower sentence than that to which the prosecution agreed, and "[a] court may not keep the prosecutor's concession by accepting a guilty plea to reduced charges, and yet impose a lower sentence than the one for which the prosecutor and the defendant bargained." *People v Seibert*, 450 Mich 500, 511; 537 NW2d 891 (1995).

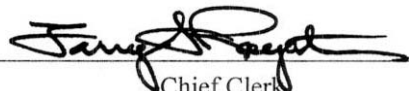
The matter is REMANDED to the trial court to permit both defendant and the prosecution the opportunity to withdraw. If either party elects to withdraw, the matter shall proceed to trial. If neither party withdraws, the trial court is DIRECTED to sentence defendant to *any* lawful HYTA sentence. That is, the parties' plea will be enforced except that there will be no specific sentence, which will be left to the discretion of the trial court. "Nothing precludes the parties from reaching a new agreement or from convincing the judge to impose a sentence that will satisfy the prosecutor and the defendant. We would encourage them to do so." *Id.* at 516. We do not retain jurisdiction.



A true copy entered and certified by Larry S. Royster, Chief Clerk, on

OCT 15 2012

Date

  
Chief Clerk