

# Court of Appeals, State of Michigan

## ORDER

People of MI v Willie Lamar Clark

Docket No. 309975

LC No. 12-000898-FH; 12-001051-FH

Kurtis T. Wilder  
Presiding Judge

Michael J. Talbot

Cynthia Diane Stephens  
Judges

The Court orders that, with respect to 12-00898-FH, the delayed application for leave to appeal is DENIED for lack of merit in the grounds presented. With respect to 12-001051-FH, in lieu of granting the delayed application for leave to appeal, the Court VACATES both defendant's plea and the March 13, 2012 order of probation. The trial court was without authority to impose a two-year prison term as a condition of probation. Once a court places a juvenile on Holmes Youthful Trainee Act (HYTA) status, it must choose only one of the alternatives stated in section 13(1) of that act, MCL 762.13(1), 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 from the plea agreement. 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; that 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

MAR - 5 2013

Date

  
Chief Clerk