

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

KOJO ELLIS, a/k/a ZERON BOY BELL,

Defendant-Appellant.

UNPUBLISHED

May 24, 1996

No. 179646

LC Nos. 88-013848;

89-003060

Before: Kavanagh, T.G.,* P.J., and R.B. Burns** and G.S. Allen,** JJ.

MEMORANDUM.

Defendant pleaded nolo contendere in lower court case no. 88-013848 to two counts of assault with intent to commit murder, MCL 750.83; MSA 28.278, and was sentenced to concurrent terms of twenty-two to forty years' imprisonment. Defendant pleaded nolo contendere in lower court case no. 89-003060 to assault with intent to do great bodily harm less than murder, MCL 750.84; MSA 28.279, and receiving or concealing stolen property over \$100, MCL 750.535; MSA 28.803, and was sentenced to five to ten years' imprisonment and two to five years' imprisonment, respectively. Defendant appeals by leave granted. We remand. This appeal has been decided without oral argument pursuant to MCR 7.214(E)(1)(b).

Of the three theories of ineffective assistance of counsel presented to the trial court, we find error only in the trial court's failure to hold an evidentiary hearing with respect to defendant's claim that his attorney told him that he would receive a sentence of ten to twenty-five years for the assault with intent to murder counts. The plea-taking transcript does not show that the trial court complied with its duty to ask defendant if anyone had promised him anything. MCR 6.302(C). In light of this omission

*Former Supreme Court Justice, sitting on the Court of Appeals by assignment pursuant to Administrative Order 1996-3.

**Former Court of Appeals Judges, sitting on the Court of Appeals by assignment pursuant to Administrative Order 1996-3.

and the record before us, we remand to the trial court for an evidentiary hearing on defendant's claim. See *People v Jackson*, 203 Mich App 607; 513 NW2d 206 (1994); *People v Thew*, 201 Mich App 78; 506 NW2d 547 (1993). See also *People v Weir*, 111 Mich App 360; 314 NW2d 621 (1981). Following the evidentiary hearing, the trial court shall decide if defendant should be allowed to withdraw the pleas under the standards for a post-sentencing motion for plea withdrawal. *People v Effinger*, 212 Mich App 67; 536 NW2d 809 (1995); *People v Jones*, 190 Mich App 509; 476 NW2d 646 (1991).

Remanded for further proceedings consistent with this opinion. No further jurisdiction.

/s/ Thomas G. Kavanagh

/s/ Robert B. Burns

/s/ Glenn S. Allen, Jr.