

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

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

RONALD EVERETT SCHARFFE,

Defendant-Appellant.

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UNPUBLISHED

June 21, 1996

No. 171707

LC No. 92-000856-FH

Before: White, P.J., and Sawyer and R.M. Pajtas,\* JJ.

MEMORANDUM.

Defendant pleaded nolo contendere to malicious destruction of property over \$100, MCL 750.377a; MSA 28.609(1), and was sentenced to six months in jail. He appeals and we vacate and remand.

Under the terms of the plea agreement, sentencing was to be delayed for one year. Upon completion of the terms imposed during the delay, including payment of restitution, costs and attorney fees, the charge would be reduced from the felony malicious destruction of property to a misdemeanor. The trial court terminated the delayed sentence for the reason that defendant had made contact with the complainant in light of his admission that the complainant initiated the contact. The court also ruled that defendant had failed to make payments on restitution, costs and attorney fees, notwithstanding that a payment schedule had not been ordered and the one-year period contemplated by the plea agreement had not yet expired.

Defendant argues that the delayed sentencing was erroneously terminated. We agree. Ordinarily, a defendant is not entitled to a formal hearing into allegations that he breached a condition of the delayed sentencing. See *People v Salgat*, 173 Mich App 742, 746; 434 NW2d 229 (1988); *People v Coleman*, 130 Mich App 639, 642; 344 NW2d 30 (1983); *People v Saylor*, 88 Mich App 270, 275; 276 NW2d 885 (1979); *People v Clyne*, 36 Mich App 152, 154; 193 NW2d 399 (1971). However, in the above cited cases, delayed sentencing was granted as a matter of judicial grace. It was

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\* Circuit judge, sitting on the Court of Appeals by assignment.

not a negotiated term of a plea agreement as it was in this case. We believe defendant is entitled to either specific enforcement of the negotiated term of his plea or an opportunity to withdraw his plea. See *People v Schluter*, 204 Mich App 60, 67; 514 NW2d 489 (1994).

We reject the prosecutor's argument that such a remedy would allow a defendant to act with impunity because the court would be powerless to terminate the delay. If a defendant breaches a condition, the court may terminate the delay regardless of whether it was negotiated as part of the plea or granted as a matter of judicial grace. Had defendant failed to make a scheduled payment, or had he initiated a contact with the complainant, the court would have the power to end the delay and impose sentence. The record of this case does not make out a breach of these conditions.

Defendant's sentence and the order terminating delayed sentence are vacated and the matter is remanded for further proceedings at which defendant shall be granted a hearing as to whether he violated his conditions of delayed sentence.

/s/ Helene N. White  
/s/ David H. Sawyer  
/s/ Richard M. Pajtas