

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

IVAN LEE SNEAR,

Defendant-Appellant.

UNPUBLISHED

September 24, 1996

No. 176792

LC Nos. 93-003992-FH;

94-004126-FH

Before: J.H. Gillis, P.J., and G.S. Allen and J.B. Sullivan, JJ.*

MEMORANDUM.

In lower court no. 93-003992-FH, defendant pleaded guilty to violating probation on his underlying conviction of malicious destruction of property, MCL 750.337a; MSA 28.609(1). In lower court no. 94-004126-FH, defendant also pleaded guilty to jail escape, MCL 750.195(2); MSA 28.392(2), and habitual offender, third offense, MCL 769.11; MSA 28.1083. Defendant was sentenced to 366 days in jail, with credit for time served, for the probation violation and an enhanced term of four to eight years' imprisonment for the escape and habitual offender convictions, to be served consecutively. Defendant appeals as of right. We affirm. This case has been decided without oral argument pursuant to MCR 7.214(A).

Defendant argues that his consecutive sentences do not conform to the plea agreement, which provided for concurrent sentences and, therefore, he should be entitled to specific performance of the plea agreement.

Where a prosecutor and a defendant agree to a specific sentence disposition in exchange for a guilty plea, the trial court, after considering the presentence report, can either accept the agreement or reject it. MCR 6.302(C)(3); *People v Killebrew*, 416 Mich 189, 206-207; 330 NW2d 834 (1982). If the court accepts the agreement, it is obliged to sentence the defendant according to the agreed-upon

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

terms. If the court concludes that the sentence is inappropriate to the circumstances or the offender, it is obliged to reject the plea and inform the defendant that it will not accept the plea or be bound by the agreement. *Id.*, 207; MCR 6.302(C)(3).

According to the plea agreement in this case, defendant was only to receive concurrent sentences for his escape and probation violation offenses if he received prison time for the probation violation. Otherwise, defendant's sentence for escape and probation violation were to run consecutively. In sentencing defendant on the probation violation, the trial court merely added one day to the jail term defendant was then serving on his original offense and did not impose prison time. Accordingly, the court fulfilled the terms of the plea agreement. Although the court was not authorized to impose concurrent sentences, MCL 750.195(2); MSA 28.392(2), this did not prejudice defendant since he received the bargained-for sentence.

Affirmed.

/s/ John H. Gillis

/s/ Glenn S. Allen, Jr.

/s/ Joseph B. Sullivan