

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JOSEPH DALE BALCOM,

Defendant-Appellant.

UNPUBLISHED

September 27, 1996

No. 178963

LC Nos. 92-000832 FH;

94-001135-FH

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

MEMORANDUM.

Pursuant to a plea agreement, defendant pleaded guilty to attempted possession with intent to deliver 650 grams or more of cocaine, MCL 333.7401(2)(a)(i); MSA 14.15(7401)(2)(a)(i) and MCL 750.92; MSA 28.287, and absconding on bond, MCL 750.199a; MSA 28.396(1). He was sentenced to forty to sixty months' imprisonment on the cocaine conviction and thirty-two to forty-eight months' consecutive imprisonment on the absconding conviction, both to be served concurrent with a sentence defendant was serving in Florida. Defendant was given credit for 234 days served. His motion for resentencing and relief from judgment was denied. Defendant appeals as of right. We remand. This case has been decided without oral argument pursuant to MCR 7.214(A).

The sentence agreement provided for a "sentence cap in this case of seven (7) years." Unfortunately, the record is not clear as to whether the sentence cap applied to the minimum sentences—as the trial court believed—or to the maximum sentences—as defendant contends. We do not believe that, on the record before us, the trial court could make the summary determination that the parties, including defendant, understood that the cap applied only to the minimum term. We therefore remand the matter for an evidentiary hearing at which the prosecutor, defense counsel and defendant

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

shall all be given an opportunity to explain their understanding of the sentencing agreement. The trial court shall then make a factual determination, after assessing the credibility of the parties, as to whether the parties understood the cap as applying to the maximum terms of defendant's sentences. If so, defendant shall be entitled to specific performance of the plea agreement. *Santobello v New York*, 404 US 257, 262; 92 S Ct 495; 30 L Ed 2d 427 (1971); *People v Johnson*, 210 Mich App 630, 632; 534 NW2d 255 (1995); *People v Jennings*, 178 Mich App 334, 336-337; 443 NW2d 793 (1989).

The trial court did not err in its determination that the initial six-month term of a grand jury convened under MCL 767.7c; MSA 28.947(3) begins when the grand jury is impaneled. MCL 767.7f; MSA 28.947(6). Accordingly, the grand jury had legal authority to operate from April 5, 1991, to July 8, 1991. There was no procedural defect which would require dismissal of the charges against defendant.

Defendant's claim that the Interstate Agreement on Detainers Act was violated has been waived by his unconditional guilty pleas. *People v Wanty*, 189 Mich App 291, 292-293; 471 NW2d 922 (1991).

Defendant has failed to to supply this Court with an adequate record to factually support his claim of a double jeopardy violation. *People v Blythe*, 417 Mich 430, 438; 339 NW2d 399 (1983). Thus, this Court has no basis upon which to review or consider the issue.

Remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ John H. Gillis

/s/ Glenn S. Allen, Jr.

/s/ Joseph B. Sullivan