

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

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

CHRISTIAN JOSEPH EMERSON,

Defendant-Appellant.

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UNPUBLISHED

September 27, 1996

No. 179771

LC No. 94-069134-FH

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

MEMORANDUM.

Pursuant to an agreement, defendant pleaded guilty to improper discharge of a firearm in a building, MCL 750.234b; MSA 28.431(2), and was sentenced to thirty to forty-eight months' imprisonment. He appeals as of right. We remand. This case has been decided without oral argument pursuant to MCR 7.214(A).

The trial court clearly erred in denying defendant's motion to withdraw his guilty plea. *People v Killebrew*, 416 Mich 189, 209-210; 330 NW2d 834 (1982); *People v Schluter*, 204 Mich App 60, 63-64; 514 NW2d 489 (1994); *People v Kean*, 204 Mich App 533, 536; 516 NW2d 128 (1994). Under the facts and circumstances of this case, where the court chose not to follow the sentencing recommendation agreed to by the prosecutor, the court was required to comply with MCL 6.203(C)(3)(d) and give defendant an opportunity to withdraw his plea before imposing the sentence. We remand the case to the trial court to give defendant the opportunity to withdraw his plea.

If defendant decides not to withdraw his plea, then his sentence will stand because we find that the trial court did not abuse its discretion in sentencing defendant. *People v Cervantes*, 448 Mich 620, 626-627; 532 NW2d 831 (1995). The sentence is proportionate to the seriousness of the circumstances surrounding the offense and the offender, *People v Milbourn*, 435 Mich 630, 635-636; 461 NW2d 1 (1990).

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

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

/s/ John H. Gillis

/s/ Glenn S. Allen, Jr.

/s/ Joseph B. Sullivan