

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JOSEPH H. BENNETT, SR.,

Defendant-Appellant.

UNPUBLISHED

October 1, 1996

No. 181200

LC No. 93-013461

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

MEMORANDUM.

Defendant pleaded nolo contendere to two counts of first-degree criminal sexual conduct, MCL 750.520b(1)(a); MSA 28.788(2)(1)(a), and one count of second-degree criminal sexual conduct, MCL 750.520c(1)(a); MSA 28.788(3)(1)(a). He was sentenced to concurrent terms of six to fifteen years' imprisonment for each of those convictions. He appeals as of right. We remand. This case has been decided without oral argument pursuant to MCR 7.214(E)(1)(b).

Defendant was denied the effective assistance of counsel because the record clearly indicates that defense counsel led defendant to believe that he would be eligible for probation. Probation was clearly not an option for a first-degree criminal sexual conduct conviction under MCL 771.1; MSA 28.1131. Since defense counsel failed to explain adequately the consequences of the pleas, defendant is entitled to withdraw his pleas. *People v Effinger*, 212 Mich App 67, 69-79; 536 NW2d 809 (1995); *People v Corteway*, 212 Mich App 442, 445; 538 NW2d 60 (1995). Defendant's other claims of ineffective assistance of counsel are without merit. In light of our decision to remand the case to allow defendant to withdraw his pleas, we find it unnecessary to address his sentencing issues and the remaining claims relating to his pleas to first-degree CSC.

Remanded to give defendant an opportunity to withdraw his pleas. We do not retain jurisdiction.

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

/s/ John H. Gillis
/s/ Glenn S. Allen, Jr.
/s/ Joseph B. Sullivan