

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

WALTER KEITH CLARK,

Defendant-Appellant.

UNPUBLISHED

October 8, 1996

No. 190526

LC No. 95-051806-FH

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

MEMORANDUM.

Defendant pleaded guilty to delivery of less than fifty grams of cocaine, MCL 333(7401)(2)(a)(iv); MSA 14.15(7401)(2)(a)(iv), and was sentenced to five to twenty years' imprisonment. He appeals as of right. We remand. This case has been decided without oral argument pursuant to MCR 7.214(E)(1)(b).

Defendant seeks an evidentiary hearing on his claim that his plea was not voluntary or understanding because it was induced by inaccurate information regarding what the sentencing guidelines would be. We disagree with that claim but find that a remand is warranted on another ground. The record reveals that the trial court failed to advise defendant of his maximum sentence as required by MCR 6.302(B)(2). For that reason, we believe the matter should be remanded to give defendant the opportunity to withdraw his guilty plea. *Guilty Plea Cases*, 395 Mich 96, 118; 235 NW2d 132 (1975); *People v Jones*, 105 Mich App 269, 271; 306 NW2d 475 (1981). If defendant chooses to withdraw his plea, the prosecutor shall be entitled to pursue the original charges against defendant. MCR 6.312. If defendant chooses not to withdraw his plea, his conviction and sentence shall stand because the plea is not otherwise involuntary or not understandingly made, cf., *People v Schirle*, 105 Mich App 381, 385; 306 NW2d 520 (1981), and the five- to twenty-year sentence does not violate the principle of proportionality. *People v Milbourn*, 435 Mich 630; 461 NW2d 1 (1990).

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

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

/s/ John H. Gillis

/s/ Glenn S. Allen, Jr.

/s/ Joseph B. Sullivan