

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JODY PATRICK BUTLER,

Defendant-Appellant.

UNPUBLISHED

November 26, 1996

No. 181093

LC No. 93-001399-FH

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

MEMORANDUM.

Defendant pleaded guilty of breaking and entering an occupied dwelling house, MCL 750.110; MSA 28.305, and habitual offender, second offense, MCL 769.10; MSA 28.1082. He was sentenced to four to fifteen years' imprisonment, and now appeals as of right. We affirm. This case has been decided without oral argument pursuant to MCR 7.214(A).

Defendant argues for the first time on appeal that the prosecution did not comply with the terms of the plea agreement and that he is entitled to specific performance, or a minimum sentence of only thirty-two months. Defendant never moved to withdraw his guilty plea on this ground in the trial court. He also did not file a motion to remand in this Court. Accordingly, the issue has not been properly preserved for appellate review. MCR 6.311(C); *People v Nowicki*, 213 Mich App 383, 385; 539 NW2d 590 (1995). However, we note that while there was a prior agreement for a sentence on the underlying offense limiting that sentence to thirty-two months' imprisonment, defendant moved to withdraw from that plea agreement. There is no evidence in the record to support defendant's claim that the trial court or the prosecutor did not abide by the terms of the plea agreement in effect at the time defendant entered a plea in September of 1994.

Affirmed.

/s/ John H. Gillis

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

/s/ Glenn S. Allen, Jr.

Joseph B. Sullivan, J., not participating.