

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JAMES C. CRISTINI,

Defendant-Appellant.

UNPUBLISHED

March 4, 1997

No. 181585

Oakland Circuit Court

LC Nos. 94-134253 FH, 94-

134254 FH

Before: Jansen, P.J., and Reilly and W.C. Buhl,* JJ.

MEMORANDUM.

Defendant pleaded guilty of two counts of drawing a check over \$200 without sufficient funds, MCL 750.131(3)(c); MSA 28.326(3)(c) and of being an habitual offender, second offense, MCL 769.10; MSA 28.1082. On October 17, 1994, he was sentenced as an habitual offender to one year in jail, with credit for 132 days previously served. Defendant's claim of appeal was filed with this Court on December 19, 1994. According to the circuit court's docket entries, defendant filed a motion to withdraw his pleas on September 9, 1996. Defendant asserted that the pleas were entered pursuant to a *Cobbs*¹ agreement, that the court's preliminary evaluation was that the sentence "would consist of time served," and that the court exceeded that evaluation without giving defendant the opportunity to withdraw his plea. This argument is also advanced as defendant's sole issue on appeal. The record does not indicate that the court held a hearing or ruled on defendant's motion. Therefore, a ruling by this Court would be premature. Accordingly, we remand to the circuit court for further proceedings and a determination on defendant's motion.

Remanded. We retain jurisdiction.

/s/ Kathleen Jansen

/s/ Maureen Pulte Reilly

/s/ William C. Buhl

* Circuit judge, sitting on the Court of Appeals by assignment.

¹ *People v Cobbs*, 443 Mich 276; 505 NW2d 208 (1993).