STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee

v

JAMES ALAN ENGELMANN,

Defendant-Appellant

UNPUBLISHED
March 21, 1997

No. 191952
Genesee Circuit Court
LC No. 92-047161

Before: Corrigan, C.J., and Doctoroff and R.R. Lamb,* JJ.

PER CURIAM.

Defendant pleaded guilty to charges of breaking and entering a building, MCL 750.110; MSA 28.305, and being an habitual offender, third offense, MCL 769.11; MSA 28.1083. He now appeals as of right, arguing that he was denied the benefit of his plea bargain in another case when this case was not dismissed. Defendant also contends that resentencing is required because the trial court erred in scoring the offense variables against him. We reverse.

This case is interrelated with another case in which similar charges were brought against defendant in Genesee County. The instant case, lower court # 47161, was before circuit judge Yeotis. Lower court # 46831 (Court of Appeals Docket No 19150) involved charges against defendant before circuit judge Beagle. In case # 46831, defendant entered into a plea agreement on September 4, 1992, in which he agreed to plead guilty to possession of burglar tools and habitual offender, third offense. He also agreed to plead guilty to another charge of B & E and habitual offender, third offense, which was before another judge (these pleas are unrelated to this appeal). In exchange for these pleas, the prosecution agreed to reduce defendant's status from habitual offender, fourth offense, to habitual offender, third offense. In addition, the prosecutor stated the following:

> And, further, he has a case before Judge Yeotis, case number 47167 (sic), which is also a Breaking and Entering and Habitual Fourth. That case will be nolle prosse.

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

Apparently the prosecutor misspoke, because lower court # 47167 was a completely unrelated matter. However, defendant's breaking and entering case before judge Yeotis (the subject of appeal in this case) was lower court # 47161. It is apparent that the prosecutor was referring to the instant charges against defendant when he stated that the case would be nolle prosse.

Based on the plea agreement in lower court # 46831 before Judge Beagle, defendant contends that he was denied the benefit of the plea agreement when the prosecutor pursued the instant charges against him in Judge Yeotis' court. We agree and reverse.

In light of the earlier plea agreement, we are baffled as to why, on November 24, 1992, defendant and his attorney agreed to plead guilty to the charges against him before Judge Yeotis. The parties did not clarify the situation, as neither the parties nor their attorneys appeared at oral argument before this Court, and plaintiff failed to file an appellate brief until after oral argument. In our review of the lower court files of both cases, we found no basis for abandonment of the plea agreement, nor any evidence that it was modified. Thus, we find that, in pursuing the charges to judgment, the prosecution failed to fulfill the plea agreement which was reached in lower court # 46831. We are not persuaded by plaintiff's untimely claims to the contrary. An appropriate remedy for such a breach is specific performance of the agreement. *People v Kenneth Johnson*, 122 Mich App 26, 29-30; 329 NW2d 520 (1982); *People v Schluter*, 204 Mich App 60, 67; 514 NW2d 489 (1994). Accordingly, we reverse defendant's convictions and sentence in this case.

In light of our disposition of this issue, we need not address defendant's claim that the trial court erred in calculating the scoring variables when determining his sentence.

Reversed.

/s/ Maura D. Corrigan
/s/ Martin M. Doctoroff
/s/ Richard R. Lamb