

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DEREK TOOKS,

Defendant-Appellant.

UNPUBLISHED

March 28, 1997

No. 190099

Recorder's Court

LC No. 94-008791-FC

Before: D.F. Walsh,* P.J., and R.P. Griffin** and W.P. Cynar,* JJ.

MEMORANDUM.

Defendant pleaded guilty to assault with intent to commit murder, MCL 750.83; MSA 28.278, and armed robbery, MCL 750.529; MSA 28.797. He was sentenced to concurrent terms of twenty to forty years' imprisonment for each conviction, and now appeals as of right. We affirm. This case has been decided without oral argument pursuant to MCR 7.214(A).

We reject defendant's claim that his plea was based on an illusory bargain. The prosecutor was authorized to reissue the warrant charging defendant with the original charges because there was additional information to be presented and there was no indication that the prosecutor was judge-shopping or that this was done only to harass defendant. *People v Vargo*, 139 Mich App 573, 578; 362 NW2d 840 (1984); MCR 6.110 (F). Even if there was inadequate notice of the filing of the habitual offender charge under *People v Tippery*, 188 Mich App 445,446 ; 470 NW2d 431 (1991), and *People v Hays*, 164 Mich App 15; 416 NW2d 358 (1987), and that charge was not valid, defendant still received a good bargain. There was a sentencing agreement and dismissal of other charges. Under these circumstances, the plea bargain was not illusory. *People v Taylor*, 418 Mich 954; 344 NW2d 7 (1984); *People v Taylor*, 124 Mich App 426, 431; 335 NW2d 208 (Kaufman J.,

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**Former Supreme Court justice, sitting on the Court of Appeals by assignment pursuant to Administrative Order 1996-10.

dissenting). We also reject defendant's claims that the plea was illusory because the dismissal of the habitual offender charge was valueless and he did not know this. Defendant received the agreed upon twenty- to forty-year sentences. Had he been convicted of the habitual offender charge, he could have been sentenced to life imprisonment. MCL 769.10; MSA 28.1082. Therefore, the bargain had value. In any event, even if he received no sentencing benefit at all, this fact would not by itself invalidate the plea. *People v Peete*, 102 Mich App 34, 38-39; 301 NW2d 53 (1980).

Affirmed.

/s/ Daniel F. Walsh

/s/ Robert P. Griffin

/s/ Walter P. Cynar