

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

PETE NIETO, JR.,

Defendant-Appellant.

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UNPUBLISHED

June 24, 1997

No. 191127

Lenawee Circuit Court

LC No. 94-6329 FH

Before: Saad, P.J., and Hood and McDonald

MEMORANDUM.

The question raised by defendant's appeal is whether the trial court erred in imposing a probationary sentence in violation of *People v Cobbs*, 443 Mich 276; 505 NW2d 208 (1993). At the time of the plea taking, the trial court advised defendant that if he were to be sentenced in a manner other than agreed upon he would have the right to withdraw his plea. Also, defendant failed to object to the probationary term at the time he was sentenced to five years probation plus the clearly agreed upon nine months incarceration in the county jail. Further, after the sentence was imposed, defense counsel said that he had nothing further to state for the record. These facts satisfy this Court that the trial court's findings of fact as to the actual terms of the plea bargain are not clearly erroneous. Ambiguous plea bargains are properly subject to any disagreements being resolved by the evidentiary hearing process. *People v Swirles (After Remand)*, 218 Mich App 133, 138-139; 553 NW2d 357 (1996). The probationary terms of defendant's sentence were not a violation of the plea agreement. Accordingly, the subsequent probation violation proceedings, to which defendant pled guilty, and imposition of sentence upon defendant as a probation violator, were not invalid *ab initio*. Rather, this is a proper consequence of the validly imposed probationary sentence.

Affirmed.

/s/ Henry William Saad

/s/ Harold Hood

/s/ Gary R. McDonald