

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ROBERT LOUIS PRITCHETT,

Defendant-Appellant.

UNPUBLISHED

July 25, 1997

No. 190939

Saginaw Circuit Court

LC No. 94-009531 FC

Before: Jansen, P.J., and Wahls and P.R. Joslyn*, JJ.

MEMORANDUM.

Defendant pleaded guilty but mentally ill to armed robbery, MCL 750.529; MSA 28.797, and received an enhanced sentence of ten to forty years imprisonment, reflecting his status as a third offender, MCL 769.11; MSA 28.1083. Defendant appeals as of right. We remand.

Defendant claims that the prosecutor breached the sentencing agreement by recommending a ten-year cap on the minimum sentence, instead of honoring his promise to recommend a ten-year cap on the maximum sentence. Where a defendant's plea is induced by the prosecutor's promise relating to sentencing, the terms of that agreement must be fulfilled. *People v Swirles*, 206 Mich App 416, 418-419; 522 NW2d 665 (1994); *People v Nixten*, 183 Mich App 95; 454 NW2d 160 (1990).

It is not apparent from the record before us whether the prosecutor agreed to recommend a ten-year cap on the minimum sentence or whether he agreed to recommend a ten-year cap on the maximum sentence. We, therefore, remand to the trial court for a determination of the actual terms of the sentencing agreement. *Swirles, supra* at 419. If the trial court concludes on remand that the agreement was breached, the court should resentence defendant, so that defendant may obtain specific performance of the bargain. *Swirles, supra*.

Remanded. We do not retain jurisdiction.

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

/s/ Kathleen Jansen
/s/ Myron H. Wahls
/s/ Patrick R. Joslyn