

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DONTE RAMONE WHITE,

Defendant-Appellant.

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UNPUBLISHED

September 30, 1997

No. 187354

Jackson Circuit Court

LC No. 94-70907-FH

Before: Gage, P.J., and McDonald and Fitzgerald, JJ.

PER CURIAM.

Pursuant to a plea agreement, defendant pleaded guilty to possession with intent to deliver 50 grams or more but less than 225 grams of cocaine, MCL 333.7401(2)(a)(iii); MSA 14.15(7401)(2)(a)(iii) and conspiracy to commit the same, MCL 750.157a; MSA 28.354(1). Defendant was sentenced to consecutive prison terms of from six to twenty and six to ten year's respectively. Defendant appeals as of right. We remand.

Defendant's plea agreement was that if he helped police arrange at least 3 cocaine buys of over 50 grams the prosecution would reduce the charge against defendant to a single count of possession with intent to deliver less than 50 grams. The prosecutor stated the following on the record at the time of defendant's plea :

The record should be clear that basically this all rests on what the Defendant does or does not do, and that his failure to act or satisfy LAWNET in terms of what they've arranged with him to do, should be considered grounds for withdrawing his plea at the time of sentencing (emphasis added).

Defendant failed to uphold his end of the bargain. Although he helped arrange the undercover purchase of some drugs, he did not arrange the 3 cocaine buys of over 50 grams contemplated in the agreement.

Defendant was sentenced without reference by any party to his right under the agreement to withdraw his plea. Following sentencing defendant filed a motion to withdraw his plea or in the

alternative for a *Ginther*<sup>1</sup> hearing to determine whether defendant's counsel was ineffective for failing to move to withdraw the plea prior to sentencing. In denying the motion the court stated:

I don't really think this is a sufficient basis, so I'm denying the motion. I don't think there was a reservation of allowing the defendant to withdraw the plea if he didn't complete the buys.

The trial court clearly erred in finding the bargain did not grant defendant the right to withdraw his plea should he fail to complete the agreed upon buys. Although this may not have been the prosecutor's or even defense counsel's intent when entering into the agreement, this is the agreement placed on the record and heard and agreed to by defendant. The trial court should have addressed defendant's right to withdraw the plea according to the agreement and whether defendant's failure to assert the right prior to sentencing waived the right as well as whether defendant was deprived the right to the effective assistance of counsel because his attorney failed to move to withdraw the plea prior to sentencing. We remand for consideration of these issues.

Defendant's remaining issues have no merit. Courts generally will reject assertions that promises of leniency were made, where, as here, the defendant has sworn on the record that no such promises were made and there is no record support for post-sentencing allegations that the promises were made. *People v Haynes (After Remand)*, 221 Mich App 551; 562 NW2d 241 (1977). The trial court did not clearly err by finding defendant had not kept his end of the plea agreement, *People v Hannold*, 217 Mich App 382; 551 NW2d 710 (1996), or that defendant was a mid-level cocaine dealer rather than a courier. MCR 2.613(C). Finally, defendant's sentences were not disproportionately severe. *People v Milbourn*, 435 Mich 630; 461 NW2d 1 (1990).

Remanded for proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Hilda R. Gage

/s/ Gary R. McDonald

/s/ E. Thomas Fitzgerald

<sup>1</sup> *People v Gionther*, 390 Mich 436; 212 NW2d 922 (1973).