

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

FREDDIE BANFORD, JR.,

Defendant-Appellant.

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UNPUBLISHED

November 25, 1997

No. 197920

Recorder's Court

LC No. 95-013837

Before: Jansen, P.J., and Fitzgerald and Young, JJ.

MEMORANDUM.

Defendant pleaded nolo contendere to third-degree criminal sexual conduct, MCL 750.520d; MSA 28.788(4), and received a sentence of four to fifteen years' imprisonment. Defendant appeals by leave granted. We affirm. This case is being decided without oral argument pursuant to MCR 7.214(E).

In contemplation of entering his nolo contendere plea, defendant asked the trial court for a preliminary sentence evaluation pursuant to *People v Cobbs*, 443 Mich 276, 283; 505 NW2d 208 (1993). The trial court indicated that it was inclined to impose a sentence at "the low end of the guidelines," after reading the presentence investigation report and talking with the prosecutor and defense counsel and based on the court's "understanding of the guidelines." The presentence investigation report relied upon by the trial court to make the preliminary evaluation indicated that the recommended sentencing guidelines range was 72 to 120 months. At sentencing, defendant successfully challenged the scoring of the sentence information report and, as a consequence, the recommended sentencing guidelines range was reduced to twenty-four to sixty months. The trial court imposed a minimum sentence of four years. Defendant immediately thereafter asked to withdraw his plea. The trial court denied the request.

Defendant argues that he had an absolute right to withdraw his plea because the sentence imposed was not "at the low end of the guidelines" and, therefore, the sentence exceeded the preliminary evaluation. *Cobbs, supra*. Defendant is mistaken. The preliminary evaluation was for a sentence at the low end of the guidelines range of 72 to 120 months. The four-year minimum sentence

defendant received was more lenient than the sentence he was offered under the preliminary evaluation. Under these circumstances, the sentence imposed did not exceed the

preliminary evaluation and, therefore, defendant had no automatic right to withdraw his plea. *Cobbs, supra*; see also *People v Eloby (After Remand)*, 215 Mich App 472, 475; 547 NW2d 48 (1996).

Affirmed.

/s/ Kathleen Jansen

/s/ E. Thomas Fitzgerald

/s/ Robert P. Young, Jr.