

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff- Appellee,

v

MICHAEL L. EVANS,
a/k/a MONDRIO SIMMONS,

Defendant- Appellant.

UNPUBLISHED

January 9, 1998

No. 195271

Oakland Circuit Court

LC No. 96-143120 FH

Before: MacKenzie, P.J., and Hood and Hoekstra, JJ.

MEMORANDUM.

Defendant appeals as of right from a plea of guilty to delivery of cocaine under fifty grams, MCL 333.7401(2)(a)(iv); MSA 14.15(7401)(2)(a)(iv). Since the offense was committed on or about February 3, 1992, the 1994 amendment to Const 1963, art 1, § 20 does not bar defendant's claim of appeal. Defendant argues that the trial court erred in sentencing defendant without adhering to the *Cobbs* [*People v Cobbs*, 443 Mich 276; 505 NW2d 208 (1993)] bargain. We reverse and remand.

Over prosecutorial objection, the trial court allowed defendant to tender a conditional guilty plea, so as to preserve for appeal a speedy trial issue. This Court notes that conditional guilty pleas are permissible only with the consent of the defendant, the judge, *and* the prosecutor. *People v Reid*, 420 Mich 326, 331-332; 362 NW2d 655 (1984). The trial court also offered a *Cobbs* bargain whereby defendant would receive a sentence of one to twenty years' imprisonment to be served concurrently with other sentences to which he was subject, although the prosecutor objected, noting that, by statute, a consecutive sentence would be mandated. At sentencing, the court and defense counsel agreed that the bargain involved a minimum sentence of 1½ years' imprisonment, rather than the one year reflected in the record, and also agreed that a consecutive sentence would be mandatory under MCL 333.7401(3); MSA 14.15(7401)(2)(a)(iv). Defendant was not offered an opportunity to withdraw his plea after being informed that the original bargain would not be honored, as required by *Cobbs*, *supra*, 443 Mich at 283. Although defendant might have been expected to raise some objection on his own during allocution, he was also entitled to consult with counsel. Because counsel misunderstood the original bargain on this record, ineffective assistance of counsel was present here, which therefore warrants

setting aside the plea, whether or not defendant's personal failure to object might, in other circumstances, be deemed a waiver of the right of withdrawal.

Reversed and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Barbara B. MacKenzie

/s/ Harold Hood

/s/ Joel P. Hoekstra