

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JOHN MICHAEL CADARETTE,

Defendant-Appellant.

UNPUBLISHED

April 12, 2007

No. 267500

Genesee Circuit Court

LC No. 03-013153-FC

Before: Wilder, P.J., and Sawyer and Davis, JJ.

PER CURIAM.

Defendant pleaded guilty to first-degree home invasion, MCL 750.110a, first-degree criminal sexual conduct (two counts), MCL 750.520b, armed robbery, MCL 750.529, conspiracy to commit armed robbery, MCL 750.157a and 750.529, felon in possession of a firearm, MCL 750.224f, and possession of a firearm during the commission of a felony, MCL 750.227b. The case is before us on remand from the Supreme Court to consider as on leave granted. We affirm.

Defendant appeared before the trial court for a pretrial hearing, and at that time defense counsel told the trial court that defendant wanted to plead guilty as charged. Defense counsel reminded the trial court that he had held an in-chambers discussion on the case approximately two weeks earlier, but counsel did not state for the record any details of the discussion. Both the defense and the prosecution affirmed on the record that there was no plea agreement. While under oath, defendant confirmed his understanding that the maximum possible sentence on the criminal sexual conduct, armed robbery, and conspiracy to commit armed robbery charges was life imprisonment or any term of years. Defendant also confirmed that there were no promises not stated on the record, which had been made to induce his guilty pleas. The trial court accepted defendant's pleas of guilty as charged, and remanded him to the county jail pending sentencing. Defense counsel once again raised the subject of the in chambers discussions regarding the case, but this time advised the trial court that he had relayed the substance of that conversation to defendant:

[DEFENSE COUNSEL]: And that at that time you said you would be satisfied with going within the guidelines for a minimum and that you would follow the two-thirds rule with regard to the maximum; 32 years would be something that you would be comfortable with.

THE COURT: Yeah, I did, I did indicate to you that I would stay within the guidelines, assuming that the guidelines are as you guys indicated in chambers. So I would agree with that.

Defendant was sentenced several weeks later during a sentencing hearing in which the trial court imposed life sentences for the first-degree CSC convictions and 800-month maximum sentences for the robbery and conspiracy convictions. Neither defendant nor defense counsel objected to the maximum sentences imposed.¹

On November 8, 2004, the trial court denied defendant's motion to withdraw his guilty pleas, explaining that its position had always been that it would give a sentence within the guidelines and that it did in fact sentence defendant within the guidelines as promised.

This Court denied defendant's delayed application for leave to appeal for lack of merit in the grounds presented. But the Supreme Court has remanded the case for consideration as on leave granted to determine "whether defendant must be given the opportunity to withdraw his plea for failure of the Genesee Circuit Court to honor a sentence agreement under *People v Cobbs*, 443 Mich 276[; 505 NW2d 208] (1993)."

When a motion to withdraw a plea is made following sentencing, the decision to grant the motion rests within the discretion of the trial court. *People v Boatman*, ___ Mich App ___; ___ NW2d ___ (No. 270564, issued December 28, 2006), slip op, p 1. The trial court's decision will not be disturbed on appeal absent a clear abuse of discretion that resulted in a miscarriage of justice. *Id.* The abuse of discretion standard recognizes that there may be no single correct outcome in certain situations; instead, there may be more than one reasonable and principled outcome. When the trial court selects one of these principled outcomes, it has not abused its discretion and so the reviewing court should defer to the trial court's judgment. An abuse of discretion occurs when the trial court chooses an outcome falling outside the principled range of outcomes. *Maldonado v Ford Motor Co*, 476 Mich 372, 388; 719 NW2d 809 (2006); *People v Babcock*, 469 Mich 247, 269; 666 NW2d 231 (2003). To the extent the analysis involves the interpretation of court rules or questions of subject-matter jurisdiction or constitutional law, our review is de novo. *People v Clement*, 254 Mich App 387, 390; 657 NW2d 172 (2002). Under de novo review, we give no deference to the trial court. *People v Howard*, 233 Mich App 52, 54; 595 NW2d 497 (1998).

Under *Cobbs*, we first must determine whether the trial court stated *on the record* the length of sentence it deems appropriate on the information then available to the court. *Cobbs*, *supra* at 283 (emphasis in original). In the present case, the trial court never stated on the record that it would agree to sentence defendant to no more than a maximum sentence of 32 years, as

¹ Defense counsel did object at the sentencing hearing to the scoring of the guidelines, and he also orally moved that defendant be permitted to withdraw his pleas on the sole basis that the guidelines as scored by the trial court were higher than anticipated by the defendant. Defendant later moved for resentencing based on the alleged scoring errors. However, these challenges are not raised in the instant appeal.

defendant asserts. Instead, the trial court stated only that it agreed to stay within the guidelines when sentencing defendant, assuming the guidelines were what the parties had represented to the court in chambers.

To withdraw a plea of guilty, the *Cobbs* rule also requires that the defendant must have relied upon the trial court's preliminary evaluation of sentence. See *Id.* at 283. Before accepting defendant's pleas in the instant case, the trial court advised him that the maximum possible sentence was life in prison for some of the offenses. Defendant then affirmed that no promises, other than those stated on the record during the plea hearing, induced him to plead guilty. When a defendant states on the record that no promises, inducements, coercion, or other undue influences have been offered to a defendant or brought to bear upon him, he will be held to his record denial notwithstanding his later allegations to the contrary. MCR 6.302(B)(4). Here, defendant cannot assert on appeal that he was unaware that he could be sentenced to a maximum greater than 32 years when he acknowledged at the time of his plea a possible maximum sentence of life imprisonment.

Because the trial court never promised on the record to impose maximum sentences no greater than 32 years, defendant's testimony under oath that he did not receive any off the record promises to induce his guilty plea must control. Under the circumstances, we find that the trial court did not abuse its discretion in refusing to allow defendant to withdraw his guilty pleas.

Affirmed.

/s/ Kurtis T. Wilder
/s/ David H. Sawyer
/s/ Alton T. Davis