Michigan Supreme Court
Lansing, Michigan

Syllabus

This syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader.

PEOPLE v WINTERS

Docket No. 156388. Decided May 18, 2018.

George W. Winters pleaded nolo contendere in the Mason Circuit Court to charges of second-degree arson, MCL 750.73(1); and attempted second-degree arson, MCL 750.92, as a third-offense habitual offender, MCL 769.11(1)(a). Defendant entered into a plea agreement with the prosecutor that, in exchange for the plea, his sentence on the charge of second-degree arson would be 8 to 40 years. The plea agreement did not set forth a sentence for attempted arson. The court, Susan K. Sniegowski, J., subsequently sentenced defendant consistently with this plea agreement. During the plea colloquy, the court correctly advised defendant that his maximum possible term of imprisonment for second-degree arson was 40 years, but the court mistakenly informed defendant that his maximum possible term of imprisonment for attempted second-degree arson was 20 years when his maximum possible term of imprisonment for that conviction was 10 years. Defendant later sought to withdraw his plea, arguing that the court's misstatement regarding his maximum penalty for attempted second-degree arson violated MCR 6.302(B)(2), which requires the court to advise a defendant of the maximum possible prison sentence for the offense before accepting a plea of guilty or nolo contendere. The court denied the motion. Defendant appealed, and the Court of Appeals, MARKEY, P.J., and RONAYNE KRAUSE and BOONSTRA, JJ., affirmed, holding that a misstatement of the maximum possible sentence does not require reversal if no prejudice is shown and that, because defendant was not told that he was facing a shorter sentence than he actually was, he could not show that he was prejudiced. 320 Mich App 506 (2017). Defendant sought leave to appeal in the Supreme Court.

In a unanimous memorandum opinion, the Supreme Court, in lieu of granting leave to appeal and without hearing oral argument, *held*:

The Court of Appeals correctly held that defendant was not entitled to withdraw his plea because he was accurately advised of the maximum possible term of imprisonment he was eligible to serve and did not suffer any prejudice as a result of the trial court's misstatement of his maximum penalty for attempted second-degree arson. However, the Court of Appeals erred by holding that a defendant who is mistakenly advised that he or she is eligible to serve a lengthier maximum sentence than he or she actually is can never show prejudice. Accordingly, the portion of the opinion reading "[b]ecause defendant was not told that he was facing a shorter sentence than he actually was, he cannot show that he was prejudiced" and the accompanying

citation of *People v Shannon*, 134 Mich App 35, 38 (1984), were vacated. To the extent that *Shannon* conflicted with the decision in this case, it was overruled.

Court of Appeals judgment affirmed in part and vacated in part.

Michigan Supreme Court
Lansing, Michigan

OPINION

FILED May 18, 2018

S T A T E O F M I C H I G A N

SUPREME COURT

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v No. 156388

GEORGE WILLIAM WINTERS,

Defendant-Appellant.

BEFORE THE ENTIRE BENCH

MEMORANDUM OPINION.

Defendant, George W. Winters, pleaded nolo contendere to one count of second-degree arson, MCL 750.73(1); and one count of attempted second-degree arson, MCL 750.92, as a third-offense habitual offender, MCL 769.11(1)(a). Defendant entered into a plea agreement with the prosecutor that, in exchange for the plea, his sentence on the charge of second-degree arson would be 8 to 40 years.[1] The plea agreement did not set

[1] The prosecutor also agreed to dismiss one count of maliciously burning personal

forth a sentence for the attempted-arson charge. The trial court subsequently sentenced defendant consistently with this plea agreement. During the plea colloquy, the trial court correctly advised defendant that his maximum possible term of imprisonment for second-degree arson was 40 years,[2] but mistakenly informed him that his maximum possible term of imprisonment for attempted second-degree arson was 20 years, when in fact his maximum possible term of imprisonment for that conviction was 10 years.[3] Defendant later sought to withdraw his plea, arguing that the trial court's misstatement regarding his maximum penalty for attempted second-degree arson violated MCR 6.302(B)(2). The trial court denied defendant's motion to withdraw, and the Court of Appeals affirmed in a published decision. *People v Winters*, 320 Mich App 506; 904 NW2d 899 (2017). The Court of Appeals concluded that "a misstatement of the maximum possible sentence does not require reversal if no prejudice is shown" and that "[b]ecause defendant was not told that he was facing a shorter sentence than he actually was, he cannot show that he was prejudiced." *Id*. at 510-511.

MCR 6.302 sets forth procedures for accepting a defendant's plea of guilty or nolo contendere. In relevant part, it provides:

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property, MCL 750.78(1)(a)(*i*), a second count of second-degree arson, MCL 750.73(1), and the fourth-offense habitual-offender notice, MCL 769.12.

[2] The statutory maximum sentence for second-degree arson is 20 years in prison, MCL 750.73(3), and with the third-offense habitual-offender notice, MCL 769.11(1)(a), that maximum is doubled to 40 years in prison.

[3] The statutory maximum sentence for attempted second-degree arson is five years in prison, MCL 750.92(2), and with the third-offense habitual-offender notice, MCL 769.11(1)(a), that maximum is doubled to 10 years in prison.

> Speaking directly to the defendant or defendants, the court must advise the defendant or defendants of the following and determine that each defendant understands:
>
> * * *
>
> (2) the maximum possible prison sentence for the offense . . . .

While we agree with the Court of Appeals that "a misstatement of the maximum possible sentence does not require reversal if no prejudice is shown," *Winters*, 320 Mich App at 510, to the extent that the Court of Appeals has held that one who is mistakenly advised that he or she is eligible to serve a *lengthier* maximum sentence than he or she actually is can *never* show prejudice from this misstatement, this holding is in error. Specifically, we vacate the Court of Appeals' statement that "[b]ecause defendant was not told that he was facing a shorter sentence than he actually was, he cannot show that he was prejudiced." *Winters*, 320 Mich App at 511, citing *People v Shannon*, 134 Mich App 35, 38 (1984).[4] In the instant case, however, defendant entered into a plea agreement that specifically informed him that he would be sentenced to 8 to 40 years on the charge of second-degree arson. Defendant was then sentenced consistently with this plea agreement after the trial court properly informed him of the maximum penalty for his second-degree arson conviction, which is lengthier than his maximum penalty for his attempted second-degree arson conviction. Consequently, defendant was accurately advised of the maximum possible term of imprisonment he was eligible to serve and did

[4] To the extent that *Shannon* conflicts with our decision in this case, it is overruled.

not suffer any prejudice as a result of the trial court's misstatement of his maximum penalty for attempted second-degree arson.[5]

For this reason, we vacate that portion of the Court of Appeals' opinion holding that one who is mistakenly advised that he or she is eligible to serve a lengthier maximum sentence than he or she actually is can *never* show prejudice, but affirm its holding that defendant here is not entitled to withdraw his plea. In all other respects, leave to appeal is denied because we are not persuaded that the remaining questions presented should be reviewed by this Court.

Stephen J. Markman
Brian K. Zahra
Bridget M. McCormack
David F. Viviano
Richard H. Bernstein
Kurtis T. Wilder
Elizabeth T. Clement

[5] Because it is clear that defendant here suffered no prejudice as a result of the trial court's misstatement, we need not articulate the precise standard for determining whether a defendant has been prejudiced by a court's misstatement of the "maximum possible prison sentence for the offense" to which he pleaded guilty. MCR 6.302(B)(2).