

Court of Appeals, State of Michigan

ORDER

People of MI v Deshaun N Smith

Docket No. 273974

LC No. 06-001578-01

Michael J. Talbot
Presiding Judge

Kurtis T. Wilder

Christopher M. Murray
Judges

The Court orders, pursuant to MCR 7.205(D)(2), that the June 16, 2006 judgment of sentence is VACATED. Defendant's eight to ten year sentence violates MCL 769.34(2)(b) and *People v Tanner*, 387 Mich 683; 199 NW2d 202 (1972). Since the plea and sentence were part of an agreement, and that agreement was based on a mutual mistake regarding the length of the sentence, the agreement must be set aside, and the parties shall either reconstitute the plea agreement or proceed to trial.

This case is REMANDED to the trial court for further proceedings consistent with this order. We do not retain jurisdiction. This order shall have immediate effect. MCR 7.215(F)(2).



A true copy entered and certified by Sandra Schultz Mengel, Chief Clerk, on

January 5, 2007
Date

Sandra Schultz Mengel
Chief Clerk