

Court of Appeals, State of Michigan

ORDER

People of MI v Denate Maurice Lee

Docket No. 310502

LC No. 11-012643-FH

Elizabeth L. Gleicher
Presiding Judge

Mark J. Cavanagh

Deborah A. Servitto
Judges

Pursuant to MCR 7.205(D)(2), in lieu of granting the delayed application for leave to appeal, the Court VACATES both defendant's plea and the February 22, 2012 order of probation. The trial court was without authority to impose a two-year prison term as a condition of probation. Once a court places a juvenile on Holmes Youthful Trainee Act (HYTA) status, it must choose only one of the alternatives stated in section 13(1) of that act:

If an individual is assigned to the status of a youthful trainee and the underlying charge is an offense punishable by imprisonment for a term of more than 1 year, the court shall do 1 of the following:

(a) Commit the individual to the department of corrections for custodial supervision and training for not more than 3 years in an institutional facility designated by the department for that purpose.

(b) Place the individual on probation for not more than 3 years subject to probation conditions as provided in section 3 of chapter XI. . . .

(c) Commit the individual to the county jail for not more than one year. [MCL 762.13(1).]

None of these alternatives permit both a prison term and probation.

Because the basis of the plea bargain was an unlawful sentence, the agreement cannot be enforced. Further, resentencing would result in either defendant receiving a higher sentence than that to which he agreed, or defendant receiving a lower sentence than that to which the prosecution agreed, and "[a] court may not keep the prosecutor's concession by accepting a guilty plea to reduced charges, and yet impose a lower sentence than the one for which the prosecutor and the defendant bargained." *People v Seibert*, 450 Mich 500, 511; 537 NW2d 891 (1995).

The matter is REMANDED to the trial court to permit both defendant and the prosecution the opportunity to withdraw from the plea agreement. If either party elects to withdraw, the matter shall proceed to trial. If neither party withdraws, the trial court is directed to sentence defendant to any lawful HYTA sentence. That is, the parties' plea will be enforced except that there will be no specific sentence, which will be left to the discretion of the trial court. "Nothing precludes the parties from reaching a new agreement or from convincing the judge to impose a sentence that will satisfy the

prosecutor and the defendant. We would encourage them to do so.” *Id.* at 516. We do not retain jurisdiction.



A true copy entered and certified by Larry S. Royster, Chief Clerk, on

FEB 15 2013

Date

A handwritten signature in black ink, appearing to read "Larry S. Royster".

Chief Clerk