

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

GREGORY J. MACK,

Defendant-Appellant.

UNPUBLISHED

October 8, 1996

No. 179813

LC No. 94-131890-FC

Before: J.H. Gillis, P.J., and G.S. Allen and J.B. Sullivan, JJ.*

MEMORANDUM.

Defendant pleaded guilty of bank robbery, MCL 750.531; MSA 28.799, and habitual offender, third offense, MCL 769.11; MSA 28.1083. He was sentenced to three to twenty years' imprisonment, and now appeals as of right. We affirm. This case has been decided without oral argument pursuant to MCR 7.214(A).

The trial court did not err in refusing to sentence defendant consistent with the court's preliminary evaluation. *People v Cobbs*, 443 Mich 276, 283; 505 NW2d 208 (1993). The court properly exercised its sentencing discretion under *Cobbs*, and refused to abide by its preliminary evaluation when it learned that the preliminary evaluation was based upon an inaccurate scoring of the sentencing guidelines. The trial court gave defendant the opportunity to withdraw his guilty plea. Because defendant declined the offer, he has not shown error under *Cobbs*. Moreover, there was no sentence agreement made with the prosecution. Thus, defendant was not entitled to specific performance of a sentence agreement under *People v Killebrew*, 416 Mich 189, 206-207; 330 NW2d 834 (1982).

Affirmed.

/s/ John H. Gillis

/s/ Glenn S. Allen, Jr.

*Former Court of Appeals judges, sitting on the Court of Appeals by assignment pursuant to Administrative Order 1996-3.

/s/ Joseph B. Sullivan