

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DAREN DENIS COLWELL,

Defendant-Appellant.

UNPUBLISHED

July 24, 2003

No. 239647

Oakland Circuit Court

LC No. 99-165612-FH

Before: Zahra, P.J., and Talbot and Owens, JJ.

MEMORANDUM.

Defendant appeals by delayed leave granted his guilty plea based conviction for two counts of third-degree criminal sexual conduct. MCL 750.520d. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant pleaded guilty after the trial court made a sentence evaluation indicating that it would enter a delayed sentence of probation if defendant complied with conditions imposed by the court. Defendant failed to comply with the conditions, and he was sentenced to three to fifteen years' imprisonment. The trial court denied defendant's motion to withdraw his plea.

There is no absolute right to withdraw a guilty plea after it has been accepted. *People v Haynes*, 221 Mich App 551, 558; 562 NW2d 241 (1997). If a defendant moves to withdraw a plea after sentencing, the decision whether to grant the motion falls within the discretion of the trial court. *People v Davidovich*, 238 Mich App 422, 425; 606 NW2d 387 (1999).

Defendant asserts that his plea was illusory because the court could not have given him the promised sentence of probation. MCL 771.1 does not allow a defendant convicted of third-degree criminal sexual conduct to be sentenced to probation. However, defendant's conduct rendered the possible sentence speculative. Defendant failed to comply with the conditions imposed by the trial court, rendering the issue moot. The court complied with the sentence evaluation. Defendant failed to meet the conditions, and he was sentenced to prison.

Affirmed.

/s/ Brian K. Zahra
/s/ Michael J. Talbot
/s/ Donald S. Owens