

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DEANDREA SHAWN FREEMAN,

Defendant-Appellant.

UNPUBLISHED
November 1, 2005

No. 253553
Barry Circuit Court
LC Nos. 03-100230-FH
03-100306-FH

Before: Fort Hood, P.J., and Meter and Schuette, JJ.

METER, J. (*concurring in part and dissenting in part*).

I concur in the majority’s opinion regarding the escape charge, but I respectfully dissent with regard to the issue of negating the fourth-degree criminal sexual conduct (CSC IV) plea agreement. I would remand with respect to the CSC IV conviction to allow for vacation of the plea, at defendant’s option.

In considering whether the trial court was correct in negating the CSC IV plea agreement and overriding the prosecutor’s sentencing recommendation in response to defendant’s absconding, the significant factor is the plea agreement’s lack of language conditioning the inapplicability of the sentence recommendation on intervening conduct, e.g., absconding. As set forth in *People v Killebrew*, 416 Mich 189, 205 n 8; 330 NW2d 834 (1982),¹ quoting FR Crim P 11(e)(2), the proper procedure for establishing a plea agreement is for the court ““on the record, [to] require the disclosure of the agreement in open court”” In this case, while the record includes conditional language regarding the dismissal of the escape charge,² no such language appears on the record with respect to the sentence recommendation for the CSC IV charge. On the record, the prosecutor clearly established that the CSC IV plea agreement included a sentencing recommendation, but there was no conditional language indicating that this recommendation would be withdrawn if defendant committed intervening criminal

¹ I note that *Killebrew* was modified on other grounds in *People v Cobbs*, 443 Mich 276, 283; 505 NW2d 208 (1993).

² On the record, the prosecutor explained the plea agreement regarding the escape charge as follows: “If the Defendant fails in any manner [e.g., commits a criminal violation before sentencing] . . . our office . . . will ask the Court to proceed to sentencing in the escape charge with no sentence agreement.”

violations.³ Thus, because the trial court exceeded the sentencing recommendation in the plea agreement, the defendant should be afforded the opportunity to withdraw his guilty plea on the CSC IV charge. *Killebrew, supra* at 209-210.

In support of its holding that the plea agreement should be vitiated because defendant absconded in violation of the contemplated terms of the plea agreement, the majority relies on *People v Acosta*, 143 Mich App 95; 371 NW2d 484 (1985). However, the facts and holding of *Acosta* are not analogous or applicable to the facts of this case. In *Acosta*, this Court refused the defendant's request for specific performance of his plea agreement because, after the plea deal was reached, the defendant absconded and never appeared in court to enter his guilty plea; thus, *Acosta* only dealt with the defendant's actions *before* he entered his plea. *Id.* at 99. In the case at hand, the only issue is defendant's conduct *after* his plea, because defendant appeared in court and pleaded guilty to the CSC IV charge.

For the foregoing reasons, I would remand with respect to the CSC IV conviction to allow for vacation of the plea, at defendant's option.

/s/ Patrick M. Meter

³ The conditional language attached to the CSC IV charge established only that defendant's bond would be revoked if he committed misconduct between release and sentencing. The prosecutor further stated that there might be "absconding charges if the Defendant fails in any manner upon release."