

Order

Michigan Supreme Court
Lansing, Michigan

December 7, 2012

Robert P. Young, Jr.,
Chief Justice

145737

Michael F. Cavanagh
Marilyn Kelly
Stephen J. Markman
Diane M. Hathaway
Mary Beth Kelly
Brian K. Zahra,
Justices

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff-Appellee,

v

SC: 145737
COA: 310796
Ingham CC: 11-000462-FH;
11-000478-FH

JAMES EDWARD KITCHEN III,
Defendant-Appellant.

On order of the Court, the application for leave to appeal the July 11, 2012 order of the Court of Appeals is considered and, pursuant to MCR 7.302(H)(1), in lieu of granting leave to appeal, we VACATE the defendant's sentence in Case No. 11-000462-FH, and REMAND this case to the Ingham Circuit Court for further proceedings. There is no dispute that the trial judge deviated from the plea agreement, which included a prosecutorial sentencing recommendation pursuant to *People v Killebrew*, 416 Mich 189 (1977), but then failed to give the defendant the opportunity to withdraw his plea. On remand, the trial judge shall impose sentence in accordance with the agreement, or conduct a resentencing, or give the defendant the opportunity to withdraw his plea.

We further ORDER the trial court to determine, in accordance with Administrative Order 2003-03, whether the defendant is indigent and, if so, to appoint counsel to represent him in connection with the remand proceedings.

We do not retain jurisdiction.

Finally, we remind the trial judge of her obligations under Canon 3 of the Code of Judicial Conduct and caution her against engaging in any further ex parte communication with a party in violation of that Canon.



s1204

I, Corbin R. Davis, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

December 7, 2012

Corbin R. Davis

Clerk