

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

KYLE JAMES PARTAIN,

Defendant-Appellant.

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UNPUBLISHED

October 28, 2003

No. 240737

Kalamazoo Circuit Court

LC No. 01-000696-FH

Before: Bandstra, P.J., and Hoekstra and Borrello, JJ.

PER CURIAM.

Following a bench trial, defendant was convicted of offering or selling a form of participation in a pyramid or chain promotion, MCL 445.1528. He was sentenced to twelve months' probation. Defendant appeals as of right. We affirm.

Defendant does not dispute his involvement in a pyramid scheme, but argues that the trial court erred in denying his motion to enforce an amnesty agreement. Defendant had called a number publicized in news articles relative to an amnesty offer. He subsequently struck a deal whereby a Michigan State Police detective agreed not to submit his name to the prosecutor for prosecution if, among other conditions, he gave the money he had collected pursuant to the pyramid scheme back to the people he had collected it from. The detective initially agreed that he would not submit defendant's name after defendant repaid two individuals and entered into agreements with three others to pay them when he received money that he had paid in the scheme. After a judge determined that these agreements were not legally enforceable, the detective advised defendant that he would have to repay the money or his name would be submitted for prosecution.

On appeal, defendant attempts to expand the record with a press release and affidavits from himself and his attorney. These materials are aimed at showing that the Attorney General authorized the amnesty program and designated the Michigan State Police as an agent to be contacted. Defendant argues that since the Attorney General has supervisory authority over all prosecutors under MCL 14.28, the prosecutor was bound by the detective's representation that the agreements with the three individuals would suffice.

Defendant may not expand the record on appeal. *People v Powell*, 235 Mich App 557, 561, n 4; 599 NW2d 499 (1999). Even if these materials were reviewed, we find no clear error

in the trial court's finding that defendant and the detective did not reach a meeting of the minds. See *People v LeBlanc*, 465 Mich App 575, 579; 640 NW2d 246 (2002). While the detective initially said that the agreements would suffice, there is ambiguity in the testimony regarding whether the amnesty agreement would ultimately require payment regardless of the circumstances. There is room for an inference that the detective meant that the agreements would suffice to stall submitting the case to the prosecutor, but not that defendant would be excused from payment for purposes of amnesty if he did not receive payment from others. Thus, even if the Attorney General could have bound the prosecutor to honor an agreement between the detective and defendant, there was no clear error in the finding that an agreement was not reached.

Affirmed.

/s/ Richard A. Bandstra

/s/ Joel P. Hoekstra

/s/ Stephen L. Borrello