

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

GLENN ALLEN KERBYSON,

Defendant-Appellant.

UNPUBLISHED

September 27, 2005

No. 254349

Ionia Circuit Court

LC No. 2002-012249-FC

Before: Bandstra, P.J., and Neff and Donofrio, JJ.

MEMORANDUM.

Defendant was charged with first-degree murder, MCL 750.316. He pleaded guilty of second-degree murder, MCL 750.317, pursuant to a plea and sentence agreement, and was sentenced in accordance with the sentence agreement to a prison term of thirty-seven to seventy-five years. He appeals as of right, challenging the validity of his sentence. We affirm.

Defendant committed the offense in 1981, but was not convicted and sentenced until 2002. He argues that, at sentencing, the trial court erred by failing to use the 1988 edition of the judicial sentencing guidelines, as mandated by Administrative Order No. 1988-4. *People v Fisher*, 442 Mich 560, 581-582; 503 NW2d 50 (1993); *People v Potts*, 436 Mich 295, 298; 461 NW2d 647 (1990). Because defendant received the exact sentence to which he expressly agreed as part of his plea-based sentencing agreement, and because defendant made no effort to withdraw his plea in the trial court, he may not now challenge the sentence imposed pursuant to that agreement. See *People v Blount*, 197 Mich App 174, 175-176; 494 NW2d 829 (1992). In sum, defendant's express acceptance of the sentencing agreement and failure to move to withdraw his plea constituted a waiver of this issue, *People v Carines*, 460 Mich 750, 762 n 7; 597 NW2d 130 (1999), and, consequently, there is no error to review, *People v Carter*, 462 Mich 206, 215, 219-220; 612 NW2d 144 (2000).

We affirm.

/s/ Richard A. Bandstra

/s/ Janet T. Neff

/s/ Pat M. Donofrio