

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ERNEST V. STEWART

Defendant-Appellant.

UNPUBLISHED

March 4, 1997

No. 181130

Oakland Circuit

LC No. 94-133538-FH

Before: D.F. Walsh,* P.J., and R.P. Griffin** and W.P. Cynar,* JJ.

MEMORANDUM.

Defendant pleaded nolo contendere to first-degree retail fraud, MCL 750.356c; MSA 28.588(3), and habitual offender, fourth offense, MCL 769.12; MSA 28.1084, for which he was sentenced to one to two years' imprisonment. He appeals as of right. We remand. This case has been decided without oral argument pursuant to MCR 7.214(E)(1)(b).

The trial court did not abuse its discretion in sentencing defendant or in denying defendant's motion for specific performance of the sentencing agreement. *People v Cervantes*, 448 Mich 620, 626-627; 532 NW2d 831 (1995). A breach of a sentence agreement only entitles defendant to withdraw his guilty plea. *People v Cobbs*, 443 Mich 276, 283; 505 NW2d 208 (1993); *People v Dixon*, 103 Mich App 518, 524; 303 NW2d 32 (1981). We therefore remand to give defendant an opportunity to withdraw his pleas. If defendant declines to do so, the trial court may affirm his original sentence but must award him sixty days' jail credit pursuant to MCL 769.11b; MSA 28.1083(2).

*Former Court of Appeals judges, sitting on the Court of Appeals by assignment pursuant to Administrative Order 1996-10.

**Former Supreme Court justice, sitting on the Court of Appeals by assignment pursuant to Administrative Order 1996-10.

Remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Daniel F. Walsh

/s/ Robert P. Griffin

/s/ Walter P. Cynar