

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

UNPUBLISHED

Plaintiff-Appellee,

v

No. 169934

Genesee Circuit Court

FELIX ERNESTO SOSA,

LC No. 90-043068-FH

Defendant-Appellant.

Before: Smolenski, P.J., and Michael J. Kelly and Gribbs, JJ.

MICHAEL J. KELLY, J. (partial dissent)

I concur that the trial court erred in failing to conduct an entrapment hearing. I respectfully dissent as to the affirmance of the conviction and sentence.

The defendant's motion to withdraw his plea was part and parcel of the claim of entrapment. Because of the language barrier it is difficult, if not impossible, to isolate one from the other. On this record I cannot affirm the trial court's refusal to allow defendant to withdraw his plea because it appears the same counsel who moved to withdraw the plea was also counsel who advised defendant to plead guilty to conspiracy to deliver over 650 grams of cocaine, which requires a non-parolable life sentence.

I concur in the majority's remand for the conducting of an entrapment hearing but I would also have the successor judge entertain defendant's motion to withdraw his plea as the two motions are inextricably intertwined in the lower court record in the context of a confusing and opaque language barrier.

/s/ Michael J. Kelly