

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DAVID EDWARD ESTEP,

Defendant-Appellant.

UNPUBLISHED

March 20, 1998

No. 202110

Genesee Circuit Court

LC No. 92-037290-FH

ON REMAND

Before: Michael J. Kelly, P.J., and Reilly and Jansen, JJ.

PER CURIAM.

Defendant was charged with second-degree murder, MCL 750.317; MSA 28.549, and use of a firearm during the commission of a felony (felony-firearm), MCL 750.227(b); MSA 28.424(2). A jury convicted defendant of voluntary manslaughter, MCL 750.321; MSA 28.553, and felony-firearm. The trial court sentenced defendant as an habitual third-time offender, MCL 769.11; MSA 28.1083, to eighteen to thirty years' imprisonment, to be served consecutively to the mandatory two-year sentence for the felony-firearm conviction.

Defendant appealed his convictions as of right, contending, that the trial court erred in rejecting the plea agreement that he had entered into with the prosecutor. By the terms of the bargain, defendant agreed to plead guilty to the crime of careless use of a firearm resulting in death, MCL 752.861; MSA 28.436(21), a two-year misdemeanor. The trial court refused to accept defendant's guilty plea to that felony because the family of the victim expressed strong opposition to it. In an unpublished opinion, released June 11, 1996, we held that, in light of the revisions to MCR 6.301 and MCR 6.302, the adoption of the staff comments to MCR 6.301(B), and this Court's decision in *People v Grove*, 208 Mich App 574; 528 NW2d 796 (1995)¹, the trial court did not have discretion to reject defendant's guilty plea, primarily because defendant's sentencing was not part of the underlying plea agreement. *People v Estep*, unpublished opinion per curiam of the Court of Appeals, issued June 11, 1996 (Docket No. 167806). Therefore, we reversed defendant's convictions and remanded the case for acceptance of defendant's guilty plea, as consistent with the opinion.

The prosecutor applied for leave to appeal this panel's decision. In lieu of granting leave, the Supreme Court remanded this matter to the trial court to determine "whether the prosecutor in off-the-record discussions with defense counsel or defendant expressly conditioned any plea offer on the concurrence of the victim's family." *People v Estep*, 453 Mich 917; 554 NW2d 910 (1996). At the hearing on this matter, witnesses for the prosecution, including the Genesee County Prosecutor and the assistant prosecutor in charge of the case, testified that the plea agreement was conditioned on the acquiescence of the victim's family, a fact of which defendant's attorney had been apprised. However, the defense attorney could not recall whether the plea agreement had been conditioned on the family's approval. The trial court resolved this matter against defendant, finding that the plea disposition was actually conditioned on the family's approval.

By order dated February 28, 1997, the Supreme Court, in lieu of granting leave to appeal, vacated the judgment of the Court of Appeals and remanded the case to this Court for reconsideration in light of the findings of the circuit court.

On appeal after remand, defendant argues that the trial court abused its discretion by rejecting the plea agreement. In light of the Supreme Court's decision in *People v Grove*, 455 Mich 439; 566 NW2d 547 (1997), we must disagree. In *Grove*, the defendant had been charged with first-degree criminal sexual conduct,² a charge carrying a possible maximum sentence of life imprisonment,³ and second-degree criminal sexual conduct,⁴ which carries a maximum fifteen-year sentence.⁵ Defendant agreed to plead guilty to fourth-degree criminal sexual conduct,⁶ a misdemeanor carrying a maximum sentence of two years' imprisonment and a \$500 fine.⁷ In exchange, the prosecutor was to dismiss the other charges against defendant and recommend that he serve not more than one year in the county jail. *Id.* at 444-445. The trial court rejected the proposed plea agreement, because the victim, who was the defendant's fifteen-year-old daughter, recommended that defendant serve prison time, and the cap as recommended by the prosecutor would not allow for prison time. *Id.* at 446. Subsequently, a jury convicted the defendant of one count of second-degree criminal sexual conduct. *Id.* at 447. This Court reversed the defendant's conviction on the basis that "a trial court retains the option to reject a defendant's underlying guilty plea only when the plea agreement includes a specific sentence disposition," and the *Grove* defendant's plea agreement included only a prosecutorial sentence recommendation. *People v Grove*, 208 Mich App 574, 579; 528 NW2d 796 (1995). The Supreme Court reversed, stating, "[T]he decision whether to accept or reject a bargained plea, on the basis of whether acceptance of the proffered plea presents an undue interference with the judge's sentencing discretion, given the facts of the individual case, is a proper exercise of the trial court's discretion." 455 Mich at 460.⁸

In this case, on reconsideration we find that the trial court did not abuse its discretion by rejecting the plea agreement. Defendant was originally charged with second-degree murder, an offense that carries a potential sentence of life imprisonment. MCL 750.317; MSA 28.549. Motivated by the strong objections of the victim's family, the trial court rejected the proposed plea of careless use of a firearm resulting in death, which effectively would have constrained the trial court's sentencing discretion by reducing the maximum potential sentence to imprisonment for only two years. MCL 752.862; MSA 28.436(21). As in *Grove*, we find that the trial court's rejection of defendant's guilty plea "reflected

[its] understanding of the plea agreement, considering the facts and the interests of the victim, as a substantial hinderance of [its] ability to impose an appropriate sentence under the plea bargain where the offense to which the defendant agreed to plead guilty . . . is a two-year maximum misdemeanor, while the originally charged offense[] w[as] subject to a sentence of life or any term of years.” *Id.* at 463-464. After *Grove*, it is clear that the trial court has discretion to reject a plea where the sentencing potential differs substantially from that posed by the originally charged offense, even where the plea agreement contains no suggested sentence. Accordingly, we find that the trial court did not abuse its discretion by rejecting defendant’s plea based on the victim’s family’s desire for harsher sentencing.

Affirmed.

/s/ Michael J. Kelly
/s/ Maureen Pulte Reilly
/s/ Kathleen Jansen

¹ This opinion was later reversed by the Michigan Supreme Court. See *People v Grove*, 455 Mich 439; 566 NW2d 547 (1992).

² MCL 750.520b(1)(a); MSA 28.788(2)(1)(a).

³ MCL 750.520b(2); MSA 28.788(2)(2).

⁴ MCL 750.520c(1)(a); MSA 28.788(3)(1)(a).

⁵ MCL 750.520c(2); MSA 28.788(3)(2).

⁶ MCL 750.520e; MSA 28.788(5).

⁷ MCL 750.520e(2); MSA 28.788(5)(2).

⁸ The Supreme Court found that MCR 6.302(C)(3)(a) specifically authorized the trial court to reject a plea agreement that included either a sentence agreement, or a sentence recommendation. *Id.* at 455-456. Additionally, the Supreme Court noted that, contrary to the defendant’s argument, nothing in *People v Killebrew*, 416 Mich 189; 330 NW2d 834 (1982), “suggests a limitation on the trial court’s option to reject a plea agreement in which the agreement did not provide for a specific sentence disposition.” *Id.* at 456. Lastly, the Supreme Court stated that the “interests served by the nolle prosequi statute,” MCL 767.29; MSA 28.969, which requires the trial court to grant leave before a nolle prosequi may be entered, “would be defeated” if the prosecutor and defendant could compel the trial court to accept an underlying plea “no matter how severe the departure from the original charge and its sentencing framework.” *Id.* at 459-460.