

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

CHRIS A. CANN,

Defendant-Appellant.

UNPUBLISHED

July 17, 1998

No. 199471

Oakland Circuit Court

LC No. 94-133547 FH

Before: Murphy, P.J., and Young, Jr. and Michael R. Smith*, JJ.

MEMORANDUM.

Defendant appeals by leave granted from his plea-based conviction for receiving and concealing stolen property over \$100, MCL 750.535; MSA 28.803, and his enhanced sentence of 3-1/2 to 20 years' imprisonment, which reflects his status as a fourth felony offender, MCL 769.12; MSA 28.1084. We remand.

Defendant pleaded guilty in reliance on the trial court's representation that he would receive a sentence within the sentencing guidelines range of twenty-four to forty months or be allowed to withdraw his plea. *People v Cobbs*, 443 Mich 276; 505 NW2d 208 (1993). The trial court imposed a sentence in excess of the guidelines range and, thereby, violated the terms of the *Cobbs* agreement. *People v Chappell*, 223 Mich App 337, 342-343; 566 NW2d 42 (1997). Because the trial court was under the mistaken belief that the sentence imposed complied with the *Cobbs* agreement, we remand to allow the trial court to first decide if it intends to abide by the terms of the *Cobbs* agreement. *Id.*, 342. If the court believes that the *Cobbs* evaluation should be followed, then defendant should be resentenced to a minimum sentence within the guidelines range. If, on the other hand, the court decides it cannot abide by the terms of the *Cobbs* agreement, then defendant must be allowed to withdraw his plea. *Id.*, 343.

Additionally, should the court decide to resentence defendant, then the court may not impose a consecutive sentence, *People v Hardy*, 212 Mich App 318, 323; 537 NW2d 267 (1995); *People v Hunter*, 202 Mich App 23, 26; 507 NW2d 768 (1993), but may impose restitution consistent with

* Circuit judge, sitting on the Court of Appeals by assignment.

MCL 780.767(1); MSA 28.1287(767)(1) and *People v Grant*, 455 Mich 221; 565 NW2d 389 (1997).

Remanded. We do not retain jurisdiction.

/s/ William B. Murphy
/s/ Robert P. Young, Jr.
/s/ Michael R. Smith