

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

RAYMOND GERARD LINGUIDI,

Defendant-Appellant.

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UNPUBLISHED

September 18, 1998

No. 199587

Ingham Circuit Court

LC No. 92-065069 FH

Before: Holbrook, Jr., P.J., and Wahls and Cavanagh, JJ.

MEMORANDUM.

Pursuant to a plea agreement, defendant pleaded nolo contendere to second-degree criminal sexual conduct, MCL 750.520c(1)(a); MSA 28.788(3)(1)(a), and to enticing a child to engage in a child sexually abusive activity, MCL 750.145c(2); MSA 28.342a(2). He was sentenced to concurrent terms of five to fifteen years' imprisonment and of five to twenty years' imprisonment, respectively. We remanded to the trial court with the instructions to address defendant's challenges to the accuracy of information contained in the presentence investigation report and for resentencing if any of the disputed information affected defendant's sentencing. *People v Linguidi*, memorandum opinion of the Court of Appeals, issued February 27, 1996 (Docket No. 176057). On remand, the trial court resentenced defendant to the identical sentences. Defendant appeals as of right. We vacate that portion of the judgment of sentence that imposes an obligation of restitution.

Defendant's pleas were secured, in part, by a sentence agreement, the terms of which required defendant's minimum sentences to fall within the sentencing guidelines as scored for the second-degree criminal sexual conduct offense, the child sexually abusive activity offense being an offense for which the guidelines are not scored. The prosecutor violated the spirit of the agreement when she advocated a sentence for the child sexually abusive activity conviction in excess of the guidelines range. See *People v Nixten*, 183 Mich App 95, 97-99; 454 NW2d 160 (1990). Nevertheless, defendant is not entitled to withdraw his pleas. The trial court accepted the sentence agreement and abided by the terms of the agreement by imposing sentences within the guidelines range. See *People v Schluter*, 204 Mich App 60, 63-64; 514 NW2d 489 (1994); *People v Arriaga*, 199 Mich App 166, 168; 501 NW2d 200 (1993). Accordingly, no breach of the agreement occurred.

The sentence agreement that secured defendant's pleas was silent with regard to restitution. At the time the agreement was negotiated, the state of the law was that a trial court could not order restitution where restitution was not part of the sentence agreement. *People v Ronowski*, 222 Mich App 58, 61; 564 NW2d 466 (1997); *Schluter*, 204 Mich App 66. Because the trial court substantially honored the terms of the sentence agreement, we vacate that portion of the judgment of sentence that requires defendant to make restitution, thereby bringing defendant's sentences into compliance with the sentence agreement. *Schluter*, *supra* at 67.

We decline to address defendant's sentencing issues. Based on our calculations, even if we were to find error, we could provide no meaningful relief before defendant will have fully served his minimum terms. Accordingly, defendant's sentencing issues are moot. *People v Rutherford*, 208 Mich App 198, 204; 526 NW2d 620 (1995); *People v Greenberg*, 176 Mich App 296, 302-303; 439 NW2d 336 (1989).

Affirmed in part. Remanded for the purely administrative task of entering an amended judgment of sentence that does not impose a restitution obligation. We do not retain jurisdiction.

/s/ Donald E. Holbrook, Jr.

/s/ Myron H. Wahls

/s/ Mark J. Cavanagh