

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

KENNETH CLARENCE SMITH, a/k/a
KENTONE,

Defendant-Appellant.

UNPUBLISHED

July 27, 1999

No. 207090

Kalamazoo Circuit Court

LC No. 90-0000548 FC

Before: Sawyer, P.J., and Holbrook, Jr., and W. E. Collette,* JJ.

MEMORANDUM.

Defendant pleaded guilty to second-degree murder, MCL 750.317; MSA 28.549, and possession of a firearm during the commission of a felony, MCL 750.227b; MSA 28.424(2), and habitual offender, second offense, MCL 769.10; MSA 28.1082. He was sentenced to thirty-five to fifty-five years' imprisonment plus the mandatory two-year consecutive term for felony-firearm. Defendant appeals by right.¹ We affirm.

On appeal, defendant argues that he is entitled to resentencing because the prosecution breached the terms of the plea bargain by recommending a sentence of seventy to one hundred years' imprisonment and/or "as long as possible under the law," and by advising the sentencing court that the victim's family wanted defendant to be sentenced to life. We disagree.

In the plea bargain, the prosecution merely agreed not to recommend the specific sentence of "life." The plea bargain placed no restrictions on "term of years" sentence recommendations, even though a long term of years sentence may be just as harsh, if not harsher, than a parolable "life" sentence. *People v Carson*, 220 Mich App 662; 560 NW2d 657 (1996). Although one may question the value of having the prosecution promise not to recommend a "life" sentence while leaving the prosecution free to recommend an equally harsh or harsher long term of years sentence, the fact remains that defendant received everything he bargained for.²

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

Nor did the plea bargain restrict the prosecution's authority to advise the court of the wishes of the victim's family. Defendant's reliance upon *People v Kenneth Johnson*, 122 Mich App 26; 329 NW2d 520 (1982), is misplaced in this regard. The prosecution did not indicate any concurrence with the family's request for a sentence of "life." To the contrary, the prosecution recommended a sentence of seventy to one hundred years' imprisonment.

Affirmed.

/s/ David H. Sawyer

/s/ Donald E. Holbrook, Jr.

/s/ William E. Collette

¹ As part of the plea bargain, defendant waived his right to appeal his "conviction," but unlike the plea bargaining in *People v Arriaga*, 199 Mich App 166; 501 NW2d 200 (1993), there were no waivers by the appellant with regard to matters of sentencing. Accordingly, defendant's ability to seek sentencing relief on appeal is not as restricted as in *Arriaga*.

² We note that defendant does not seek to withdraw his pleas on the ground that they were induced by illusory plea bargaining.