

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JOE D. REESE,

Defendant-Appellant.

UNPUBLISHED
September 3, 1999

No. 198831
Recorder's Court
LC No. 96-002795

Before: Markman P.J., and Saad and P. D. Houk*, JJ.

MEMORANDUM.

Defendant appeals by delayed leave granted his plea-based convictions of carjacking, MCL750.529a; MSA 28.797(1); armed robbery, 750.529; MSA 28.797; assault with intent to commit murder, MCL 750.83; MSA28.278; and possession of a firearm during the commission of a felony, MCL 750.227b; MSA 28.424(2). We remand for further proceedings.

The parties requested an evaluation of the case pursuant to *People v Cobbs*, 443 Mich 276; 505 NW2d 208 (1993). At a pretrial conference the court indicated that if defendant pleaded guilty to the charges it would sentence him to concurrent terms of eight to fifteen years on the substantive charges, and to the mandatory consecutive two-year term on the felony-firearm charge. At the plea hearing, the court again indicated that it would impose those sentences. Defendant pleaded guilty to the charges with the understanding that he would receive those sentences. At sentencing, the court indicated that the range of eight to fifteen years mentioned previously had been a minimum sentence range. The court imposed concurrent sentences of ten to twenty years for the substantive offenses, and a consecutive two-year term for the offense of felony-firearm.

Defendant filed a postjudgment motion to withdraw his pleas and for resentencing. The trial court denied the motion.

We remand this matter to the trial court to allow defendant the opportunity to withdraw his pleas. A court's preliminary evaluation of a case and determination of an appropriate sentence does not

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

bind the court's sentencing discretion; however, a defendant who enters a plea of guilty

or nolo contendere in reliance on the court's preliminary evaluation of an appropriate sentence has the right to withdraw the plea if the court subsequently determines that the actual sentence must exceed the preliminary evaluation. *Cobbs, supra*, 283. In the instant case, the trial court determined that concurrent terms of eight to fifteen years for the substantive offenses, and the mandatory consecutive two-year term for the felony-firearm offense, would be appropriate. Defendant pleaded guilty in reliance on the court's evaluation. The trial court's statement at sentencing that the evaluation of eight to fifteen years had been intended as a minimum term range was inaccurate. The trial court's conclusion that it could not adhere to the preliminary evaluation mandated that defendant be given the right to withdraw his pleas.

Remanded with instructions that defendant be afforded the opportunity to withdraw his pleas. We do not retain jurisdiction.

/s/ Stephen J. Markman

/s/ Henry William Saad

/s/ Peter D. Houk