

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

FRED LYNN GODSEY,

Defendant-Appellant.

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UNPUBLISHED

April 21, 2000

No. 218657

Macomb Circuit Court

LC No. 96-001617-FC

Before: Gribbs, P.J., and Doctoroff and T. L. Ludington\*, JJ.

MEMORANDUM.

Defendant appeals as on leave granted after remand from the Supreme Court his guilty plea based conviction for armed robbery, MCL 750.529; MSA 28.797. Defendant was sentenced as a second offense habitual offender to 7½ to 25 years' imprisonment. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

After this Court denied defendant's application for leave to appeal, the Supreme Court remanded, limited to the question whether the trial court erred in denying defendant's motion to withdraw his guilty plea on grounds that the court violated *People v Cobbs*, 443 Mich 276; 505 NW2d 208 (1993). Defendant asserts that he was coerced into accepting a plea agreement that provided for a 7½ year cap on the minimum sentence when the trial court indicated that it would be inclined to impose a 20 to 40 year sentence after trial.

Under *Cobbs, supra*, a judge may participate in limited sentencing discussions. To avoid the potential for coercion, a judge must not state or imply alternative sentencing possibilities on the basis of future procedural choices, such as the exercise of the defendant's right to trial by jury or by the court. *Id.*, 283. While leniency may be bestowed for proffering a plea or accepting a bench trial, *People v Godbold*, 230 Mich App 508; 585 NW2d 13 (1998), a judge's statement of alternative sentencing possibilities has an unacceptable potential for coercion. *Cobbs, supra*.

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

Although the court's comments were off the record and no transcript is available, both the court and the prosecutor acknowledged that the court participated in discussions concerning defendant's potential sentence if he were found guilty after a trial. Where defendant learned that the court would impose a substantial sentence after trial, the comments had a potentially unduly coercive effect on defendant's exercise of his right to trial.

The trial court failed to comply with the limitations imposed by *Cobbs, supra*. Under these circumstances, the court abused its discretion in denying defendant's motion to withdraw his plea. *People v Harris*, 224 Mich App 130; 568 NW2d 149 (1997).

Reversed and remanded for trial. We do not retain jurisdiction.

/s/ Roman S. Gibbs

/s/ Martin M. Doctoroff

/s/ Thomas L. Ludington