

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

BRENT DAVID MCKNIGHT,

Defendant-Appellant.

UNPUBLISHED

January 26, 2001

No. 217562

Oakland Circuit Court

LC No. 97-154231-FH

Before: Markey, P.J., and Whitbeck and J. L. Martlew,* JJ.

MEMORANDUM.

Defendant appeals by right from a conviction of operating under the influence, third offense, MCL 257.625; MSA 9.2325, for which he was sentenced as an habitual offender, fourth offense, MCL 769.12; MSA 28.1084, to three years' probation with the first year in jail and a \$1,000 fine. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant's sole claim on appeal is that he did not receive the benefit of a *Cobbs*¹ sentencing agreement reached with the trial court and/or the prosecutor. A *Cobbs* agreement is one in which a defendant agrees to plead guilty or no contest in reliance on the court's preliminary evaluation of the sentence, but is allowed to withdraw the plea in the event the court determines that it must exceed the preliminary evaluation. *People v Cobbs*, 443 Mich 276, 283; 505 NW2d 208 (1993). Defendant by his own admission rejected such a plea agreement. However, he contends that the *Cobbs* agreement originally offered as part of a plea bargain was instead offered in consideration for his waiver of a jury trial and the court violated that agreement by sentencing him to anything other than a year in jail. We disagree.

First, it is improper for the court to enter into such an agreement, *People v Godbold*, 230 Mich App 508, 512; 585 NW2d 13 (1998), and defendant admits in his affidavit that the agreement was made with the prosecutor. Second, the trial court is not bound by any sentencing

¹ *People v Cobbs*, 443 Mich 276; 505 NW2d 208 (1993).

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

agreement reached between the parties. *People v Nixten*, 183 Mich App 95, 97; 454 NW2d 160 (1990). Third, while the record shows that a sentencing agreement was discussed, there is nothing in the record to support defendant's claim that a sentencing agreement was reached or that it was in any way predicated upon defendant's decision to waive his right to a trial by jury. Fourth, the only record support regarding a sentencing agreement of any sort is defense counsel's statement that defendant would not be sentenced to prison and that agreement was not breached. Even defendant admits in his affidavit that the prosecutor promised nothing other than that he would not go to prison and incarceration would not exceed a year in jail. On this record, we cannot find that defendant has established a right to relief.

We affirm.

/s/ Jane E. Markey
/s/ William C. Whitbeck
/s/ Jeffrey L. Martlew