

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

AUBREY WINN,

Defendant-Appellant.

UNPUBLISHED

May 25, 2001

No. 222693

Wayne Circuit Court

Criminal Division

LC No. 98-002186

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

AUBREY WINN,

Defendant-Appellant.

No. 229557

Wayne Circuit Court

Criminal Division

LC No. 98-002187

Before: Doctoroff, P.J., and Saad and Wilder, JJ.

PER CURIAM.

In Docket No. 222693, defendant was convicted by a jury of second-degree murder, MCL 750.317; MSA 28.549, assault with intent to commit murder, MCL 750.83; MSA 28.278, and possession of a firearm during the commission of a felony, MCL 750.227b; MSA 28.424(2). He was sentenced to two concurrent prison terms of twenty-four to eighty years each for the murder and assault convictions, and a consecutive two-year term for the felony-firearm conviction. In Docket No. 229557, defendant pleaded guilty to second-degree murder in a separate case and was sentenced to twenty-four to eighty years' imprisonment. Defendant appeals as of right in Docket No. 222693, and by leave granted in Docket No. 229557. The appeals have been consolidated for consideration by this Court. We affirm in both cases.

DOCKET NO. 222693

Defendant seeks specific performance of a plea agreement that he accepted before his jury trial on the original charges of first-degree murder, assault with intent to commit murder, and felony-firearm. Defendant argues that the trial court erroneously rejected the plea agreement after considerable protest by members of the murder victims' families in both cases. We disagree.

Plea agreements are reviewed in the context of their function to serve the administration of justice. *People v Swirles (After Remand)*, 218 Mich App 133, 135; 553 NW2d 357 (1996). A trial court has discretion to reject an entire plea agreement. *People v Grove*, 455 Mich 439; 566 NW2d 547 (1997). Although the trial court here gave weight to the concerns of the murder victims' relatives, we disagree with defendant's claim that the court's remarks demonstrate that it improperly abdicated its discretion to the wishes of the relatives. The court considered the interests of justice in determining that the entire plea agreement should be rejected, while also taking note of defendant's efforts to claim self-defense when providing a factual basis for each of his pleas.

Apart from the sentiments expressed by the victims' relatives in both cases, examining the trial court's decision to reject the plea agreement in the context of the record evidence then before the trial court, we hold that the trial court properly rejected the plea agreement. *Groves, supra* at 463. Because we find no abuse of discretion, it is not necessary to address whether the specific performance remedy sought by defendant would be appropriate.

Defendant also argues that the trial court abused its discretion in admitting the preliminary examination testimony of Rory Groves and Valena Jordan under MRE 804(A)(5). Defendant contends that the preliminary examination testimony was not admissible because the prosecution failed to exercise due diligence in attempting to locate these witnesses. We disagree. From our review of the evidentiary record developed in connection with this issue at trial, we are satisfied that the trial court did not abuse its discretion in finding that the prosecutor demonstrated due diligence. *People v Lukity*, 460 Mich 484, 488; 596 NW2d 607 (1999); *People v Bean*, 457 Mich 677, 684; 580 NW2d 390 (1998).

DOCKET NO. 229557

Defendant's sole issue in Docket No. 229557 is that he should be granted specific performance of the prior plea agreement negotiated by the prosecutor and defense counsel. Under this agreement, defendant would plead guilty to second-degree murder and receive a minimum sentence of eighteen years. Once again, defendant argues that the trial court erroneously rejected the plea agreement based on the protests of the murder victims' relatives.

For the same reasons set forth in our discussion of this issue in Docket No. 222693, we are convinced that the trial court did not abuse its discretion in rejecting the plea agreement. More importantly, we hold that defendant is precluded from challenging the trial court's decision in this regard because he subsequently tendered a plea of guilty in this case and that plea was not conditioned on his right to challenge the court's prior ruling. See MCR 6.301(C)(2); *People v New*, 427 Mich 482, 491; 398 NW2d 358 (1986).

Affirmed.

/s/ Martin M. Doctoroff
/s/ Henry William Saad
/s/ Kurtis T. Wilder