

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JOHN HENRY LOVELACE,

Defendant-Appellant.

UNPUBLISHED

September 28, 2001

No. 226006

Oakland Circuit Court

LC No. 99-169415-FC

Before: Cavanagh, P.J., and Markey and Cooper, JJ.

MEMORANDUM.

Defendant appeals as of right from plea-based convictions of first-degree criminal sexual conduct, MCL 750.520b, and breaking and entering, MCL 750.110, for which he was sentenced as an habitual offender, second offense, MCL 769.10, to prison terms of fifteen to thirty years' and five to fifteen years', respectively. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant first contends that the trial court erred in denying his motion to withdraw his guilty pleas. A motion to withdraw a guilty plea after sentencing is a matter within the trial court's discretion "and the trial court's decision will not be disturbed unless there is a clear abuse of discretion resulting in a miscarriage of justice." *People v Ovalle*, 222 Mich App 463, 465; 564 NW2d 147 (1997).

A guilty plea must be understanding, voluntary, and accurate. MCR 6.302. If a defendant pleads guilty in reliance on a judge's preliminary evaluation as to an appropriate sentence, he must be allowed to withdraw his plea if the judge later determines that the sentence must exceed the preliminary evaluation. *People v Cobbs*, 443 Mich 276, 283; 505 NW2d 208 (1993). The sentence agreement in this case was essentially that the court would not exceed the guidelines. The court's sentence conformed to that agreement. Based on the record presented, we find no basis for concluding that the trial court violated the *Cobbs* agreement or that defendant misunderstood the agreement. Therefore, the court did not abuse its discretion when it denied defendant's motion to withdraw his pleas.

Defendant also contends that the court abused its discretion by imposing a disproportionate sentence. We disagree. Not only did defendant acknowledge the proportionality of the sentence by accepting the *Cobbs* agreement, *Cobbs, supra* at 285, the

sentence was within the guidelines and thus is presumed proportionate, there being no unusual circumstances. See *People v Lyons (After Remand)*, 222 Mich App 319, 324; 564 NW2d 114 (1997); *People v Johnson*, 202 Mich App 281, 290; 508 NW2d 509 (1993).

Affirmed.

/s/ Mark J. Cavanagh

/s/ Jane E. Markey

/s/ Jessica R. Cooper