

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

STEVEN JOHN HARRIS,

Defendant-Appellant.

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UNPUBLISHED

March 22, 2002

No. 235175

Berrien Circuit Court

LC No. 99-411139-FC

Before: Meter, P.J., and Markey and Owens, JJ.

METER, P.J. (*concurring*).

I concur in the majority's disposition. I write separately, however, to emphasize that the parties have agreed on appeal that the plea agreement will stand.<sup>1</sup> Accordingly, the principle of finality is observed. See *People v Bulger*, 462 Mich 495, 516; 614 NW2d 103 (2000) (state has fundamental interest in finality of guilty pleas).

If the parties had not agreed to uphold the guilty plea, I might hesitate to remand this case for trial, given the fundamental interest in the finality of guilty pleas. I might be prepared to conclude instead that because defendant got what he bargained for (i.e., a minimum sentence below or equal to 135 months), he is not entitled to appellate relief. In my view, the fact that the legislative sentencing guidelines carry the force and effect of law does not necessarily "trump" the ability of the parties to agree to a range of time for minimum sentence purposes, notwithstanding any applicable guidelines. See, e.g., *United States v Nagi*, 947 F2d 211, 213-214 (CA 6, 1991), *Nagi v United States*, 90 F3d 130, 134-136 (CA 6, 1996), and *United States v Kuhl*, 816 F Supp 623, 628-629 (SD Ca, 1993).

Nevertheless, because defendant is not asking to vacate his plea and the principle of finality thus is observed, I do not believe that this case is the appropriate vehicle with which to explore whether plea agreements can take precedence over the sentencing guidelines. I therefore concur with the majority's disposition. With guilt established, the trial court is free to impose on

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<sup>1</sup> Under the plea agreement, defendant could not withdraw his plea unless the guidelines were incorrectly scored *and* the trial court exceeded 135 months on the minimum sentence. Withdrawal from the plea agreement thus was not appropriate here, because the judge imposed a minimum sentence of 110 months. At any rate, the parties have agreed that the plea shall stand.

remand the sentence it deems appropriate, including a properly-articulated departure from the applicable sentencing guidelines.

/s/ Patrick M. Meter