

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

FREDERICK LOVELACE,

Defendant-Appellant.

UNPUBLISHED

July 30, 2002

No. 236678

Wayne Circuit Court

LC No. 00-012945

Before: Gage, P.J., and Cavanagh and Wilder, JJ.

PER CURIAM.

Defendant appeals by leave granted an order sentencing him to three years' probation and restitution of \$340,000 plus seven percent interest for extortion, MCL 750.213. Defendant was originally charged with extortion, MCL 750.213, and possession of a firearm during the commission of a felony, MCL 750.227b. Defendant and the prosecuting attorney entered into a plea bargain and sentence agreement under which defendant pleaded no contest to the extortion charge. In exchange for defendant's plea, the felony-firearm charge was dropped, and defendant was to receive three years' probation and pay restitution of "\$340,000 plus 7% interest."

At sentencing, defendant asserted that his understanding of the sentence agreement was that the restitution to be paid was \$340,000, plus seven percent interest from the date of sentencing. The prosecutor contended that the restitution was the original amount of money extorted, \$340,000, plus seven percent interest from the time the victim paid defendant the money, i.e., various times during the period from 1984 to 2000, amounting to \$781,436.

On appeal, defendant argues that he should either be granted specific performance of the sentence agreement as he interprets it, or to be allowed to withdraw his plea because he did not enter into it knowingly and voluntarily. We disagree. The trial court's decision whether to allow the withdrawal of a plea is reviewed for an abuse of discretion. *People v Wilhite*, 240 Mich App 587, 594; 618 NW2d 386 (2000). An abuse of discretion is shown when an unprejudiced person, considering the facts on which the trial court acted, would conclude that there was no justification for the trial court's ruling. *People v Ullah*, 216 Mich App 669, 673; 550 NW2d 568 (1996).

Plea bargains and sentence agreements are well-established practices in Michigan jurisprudence. See MCR 6.302; *People v Siebert*, 450 Mich 500, 510; 537 NW2d 891 (1995);

People v Killebrew, 416 Mich 189, 206-207; 330 NW2d 834 (1982); *People v Johnson*, 210 Mich App 630, 632; 534 NW2d 255 (1995). When a prosecutor and a defendant agree to a specific sentence disposition in exchange for a plea, the court can either accept, reject, or defer action on the plea agreement until the court has considered the presentence investigation report. MCR 6.302(C)(3); *Johnson, supra*. If the court determines that the sentence is inappropriate, the court must reject the plea and inform the defendant that it will not abide by the agreement. The defendant may then withdraw the plea. *Siebert, supra* at 503-504; *Johnson, supra*.

The court must be convinced that the defendant's plea is understanding, voluntary, and accurate before it may accept it. First, to ensure that the plea is understandingly made, the court must inform the defendant of the name of the offense, the maximum possible prison sentence, and the rights that are waived by the tendering of the plea. Next, to ensure that the plea is voluntary, the court must ask the prosecutor and the defendant what the terms of the plea are and whether the defendant is making the plea of his own free choice. Finally, to ensure that the plea is accurate, the court must establish support for a finding that the defendant is guilty of the offense charged or to which the defendant is pleading. See MCR 6.302. "Once the court accepts the plea induced by the agreement, the terms of the agreement must be fulfilled." *Johnson, supra*. Under MCR 6.310(B), a defendant may, on motion, be allowed to withdraw his plea if (1) withdrawal is "in the interest of justice," and (2) withdrawal will not "substantially prejudice the prosecutor because of reliance on the plea." The defendant must state a fair and just reason for withdrawing the plea. *Wilhite, supra*.

Here, defendant argues that he should be allowed to withdraw his plea because there was not a meeting of the minds in the plea bargain and sentence agreement as to the amount of restitution. However, under the Crime Victim's Rights Act (CVRA), MCL 780.751, and the Michigan Constitution, Const 1963, art 1, § 24, the victim of a crime is entitled to restitution for losses incurred from the defendant's course of criminal conduct. See, also, *People v Law*, 459 Mich 419, 423-424, n 6; 591 NW2d 20 (1999). Since May 1, 1994, the CVRA has mandated restitution. See *People v Ronowski*, 222 Mich App 58, 60-61; 564 NW2d 466 (1997). "Because restitution is now mandatory, it is no longer open to negotiation during the plea-bargaining or sentence-bargaining process, and defendants are on notice that restitution will be part of their sentences." *Id.* at 61. Defendant was apprehended in 2000 and sentenced in 2001. Therefore, defendant was on notice that full restitution would be part of his sentence, regardless of the plea bargain. Defendant's reliance on *People v Schluter*, 204 Mich App 60; 514 NW2d 489 (1994), superceded by statute as stated in *Ronowski, supra* at 60, is therefore misplaced. Michigan law now requires full restitution of the victim's losses, regardless of the terms of the plea bargain or sentence agreement. Such restitution includes interest accrued from the date of loss. *Law, supra* at 424-425, 428. In this case, the interest rate was a negotiated term of the plea bargain, therefore, defendant has failed to state a fair and just reason for withdrawing the plea. See *Wilhite, supra*.

Defendant also claims that his acceptance of the plea bargain was not voluntary and knowing. The trial court carried out the requirements of MCR 6.302, and determined that defendant's no contest plea to extortion in exchange for a sentence of three years' probation, dismissal of the felony-firearm charge, and restitution to the victim was knowing and voluntary. Defendant stipulated to the underlying facts of his conviction. Here, defendant does not claim that he was, in fact, innocent or that he has a defense to the charges. See *Wilhite, supra* at 596.

Defendant and his attorney's incorrect interpretation of the plea bargain as it was stated on the written and oral record is insufficient to show that the plea was involuntary. See *id.* at 596-597. Likewise, defendant's subjective dissatisfaction with the terms of the plea agreement, as it must be interpreted under Michigan law, is not grounds for withdrawing his plea. See *id.* at 597.

Furthermore, even if defendant had presented a fair and just reason for withdrawing his plea, the prosecutor has demonstrated substantial prejudice. The IRS and FBI, who were sharing information about defendant with the state, closed their files and stopped investigating defendant after defendant agreed to pay restitution to the victim. Therefore, the prosecutor can show substantial prejudice to the case because of reliance on the plea bargain and sentence agreement. See *id.* at 594. In sum, the trial court did not abuse its discretion in denying defendant's motion to withdraw his plea.

In the alternative, defendant requests specific performance of the plea and sentence agreement as he interprets it. Such specific performance of the sentence agreement would not comply with the CVRA requirement of full restitution to the victim. Therefore, defendant is not entitled to specific performance of the plea bargain and sentence agreement as he interprets it.

Affirmed.

/s/ Hilda R. Gage
/s/ Mark J. Cavanagh
/s/ Kurtis T. Wilder