

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

EDWARD HARRELL,

Defendant-Appellant.

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UNPUBLISHED  
February 17, 2004

No. 243703  
Wayne Circuit Court  
LC No. 01-001329

Before: Cooper, P.J., and O’Connell and Fort Hood, JJ.

MEMORANDUM.

Defendant appeals by delayed leave granted from a circuit court order denying his motion to withdraw his guilty plea. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant pleaded guilty to involuntary manslaughter, MCL 750.321, and admitted his habitual offender status, MCL 769.10, pursuant to a preliminary sentence evaluation of two to five years. He later sought to withdraw his plea, asserting that the sentence of 5 to 22½ years exceeded the evaluation. A postjudgment motion to withdraw a plea is reviewed for an abuse of discretion resulting in a miscarriage of justice. *People v Davidovich*, 238 Mich App 422, 425; 606 NW2d 387 (1999), *aff’d* 463 Mich 446 (2000).

At the request of a party, the court may state on the record the length of a sentence that appears to be appropriate based on the information then before it. *People v Cobbs*, 443 Mich 276, 283; 505 NW2d 208 (1993). If the court later determines that the sentence is inappropriate, the defendant has an absolute right to withdraw his plea. *People v Everard*, 225 Mich App 455, 458; 571 NW2d 536 (1997). Whether a defendant’s sentence exceeded the preliminary evaluation is a question of fact that is reviewed for clear error. *Id.*

At the plea proceeding, the court stated that the maximum sentence for manslaughter was 22½ years, taking into consideration defendant’s habitual offender status. It then stated that its sentence evaluation was “a minimum of two to a maximum of five years in prison . . .” This statement was ambiguous in that it did not indicate whether the maximum of five years was the upper limit of the minimum sentence range or the maximum prison term to be imposed. Any ambiguity in the sentencing agreement is to “be reviewed in the context of its function to serve the administration of justice.” *People v Swirles (After Remand)*, 218 Mich App 133, 135; 553 NW2d 357 (1996).

The evaluation of two to five years was made in reference to the guidelines, which were three to five years, and the court clarified at sentencing that the evaluation was for the minimum sentence only. Indeed, the court only had authority to fix the minimum term of an indeterminate sentence; it was required to impose the maximum term established by the Legislature. MCL 769.8(1). A maximum sentence that deviates from that provided by statute is a nullity. *People v Robert A. Smith*, 35 Mich App 349, 351; 192 NW2d 626 (1971). Defendant could not have any reasonable expectation that the court would impose an invalid sentence and did not object when the court clarified the sentence evaluation. The court's sentence did not exceed the evaluation. Therefore, the trial court did not abuse its discretion in denying defendant's motion. Although the court erroneously considered defendant's motion under MCR 6.500 *et seq.*, this Court will not reverse where the trial court reaches the right result for the wrong reason. *People v Lyon*, 227 Mich App 599, 612-613; 577 NW2d 124 (1998).

Affirmed.

/s/ Jessica R. Cooper  
/s/ Peter D. O'Connell  
/s/ Karen M. Fort Hood