

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

HEIDI ANN ELKINS,

Defendant-Appellee.

UNPUBLISHED

April 20, 2004

No. 243755

Wayne Circuit Court

LC No. 01-013905-02

Before: Cooper, P.J., and Griffin and Borrello, JJ.

PER CURIAM.

The prosecution appeals by leave granted the trial court's order denying the prosecution's motion to withdraw from the plea agreement. We reverse and remand for further proceedings.

Defendant was charged with armed robbery, MCL 750.529, accessory after the fact, MCL 750.505, and third-degree fleeing and eluding, MCL 257.602a(3). Defendant pleaded guilty to the accessory after the fact and fleeing and eluding charges, and, pursuant to her guilty pleas, the armed robbery charge was dismissed. Although the plea agreement contained a provision against sentencing pursuant to the Youthful Trainee Act (YTA), MCL 762.11 *et seq.*, the trial court sentenced defendant to three years' probation and granted her youthful trainee status.

The prosecution argues that the trial court abused its discretion when it denied the prosecution's motion to withdraw from the plea agreement after the trial court imposed a sentence that violated the plea agreement. We agree. Both a trial court's decision to assign youthful trainee status and a trial court's ruling on a motion to withdraw a guilty plea are reviewed for an abuse of discretion. *People v Davidovich*, 463 Mich 446, 451; 618 NW2d 579 (2000); *People v Gow*, 203 Mich App 94, 96; 512 NW2d 34 (1993).

Once a youthful trainee has completed his sentence, he will not be deemed convicted of a crime, and proceedings regarding the disposition of the criminal charge will be closed to public inspection. *People v Bobek*, 217 Mich App 524, 529; 553 NW2d 18 (1996). Thus, sentencing pursuant to the YTA is not a sentence length per se; rather, it is a mechanism that allows the offender to serve the sentence and avoid a conviction. When a trial court accepts a plea bargain that contains a sentence agreement and imposes a sentence below that agreed to, the prosecution must be given an opportunity to withdraw from the agreement. *People v Siebert*, 450 Mich 500, 504; 537 NW2d 891 (1995). A trial court may not enforce only parts of a bargain and it may not

accept a guilty plea to reduced charges and impose a lower sentence than that for which the prosecutor and defendant bargained. *Id.* at 510-511.

The plea agreement in the instant case contained a provision for “No HYTA,” and the parties agreed to a sentence pursuant to the sentencing guidelines rather than including a sentence agreement or recommendation. This Court has found that requiring “prosecutorial approval before youthful trainee status can be granted would entirely defeat the statute’s remedial purpose.” *People v Trinity*, 189 Mich App 19, 23; 471 NW2d 626 (1991). In *Trinity*, the prosecutor unsuccessfully challenged the constitutionality of the YTA, arguing that it violated the separation of powers doctrine, and it is important to note that there was no plea agreement involved. Accordingly, we conclude that enforcing the plea agreement in the instant case does not constitute requiring prosecutorial approval for youthful trainee status. Because a trial court may not selectively enforce portions of a plea agreement, we hold that the trial court abused its discretion when it refused to honor the prohibition against YTA status and denied the prosecution’s request for withdrawal from the plea agreement. *Siebert, supra* at 510-511.

Reversed and remanded for further proceedings. We do not retain jurisdiction.

/s/ Jessica R. Cooper
/s/ Richard Allen Griffin
/s/ Stephen L. Borrello