

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

BERND DOMSIC,

Defendant-Appellee.

UNPUBLISHED

November 22, 2005

No. 255612

Wayne Circuit Court

LC No. 03-001333-01

Before: Murphy, P.J., and Sawyer and Meter, JJ.

PER CURIAM.

The prosecutor appeals as of right from an order dismissing defendant's conviction of failure to pay child support, MCL 750.165. We reverse and remand. This case is being decided without oral argument pursuant to MCR 7.214(E).

The prosecutor argues that the trial court had no legal authority to dismiss the action or alter the conditions of defendant's plea agreement. Whether the trial court was authorized to dismiss the action or alter the plea agreement are questions of law that this Court reviews de novo. *People v Tierney*, 266 Mich App 687, 712; 703 NW2d 204 (2005).

The trial court erred by deviating from the plea agreement and dismissing the action. At the plea hearing, the trial court ordered a delayed sentence under MCL 771.1(2).¹ The order of delayed sentence recited the parties' agreement, i.e., that if defendant paid off his child support arrearage within one year, the prosecutor would recommend dismissal of the action. The order

¹ MCL 771.1(2) provides:

In an action in which the court may place the defendant on probation, the court may delay sentencing the defendant for not more than 1 year to give the defendant an opportunity to prove to the court his or her eligibility for probation or other leniency compatible with the ends of justice and the defendant's rehabilitation. When sentencing is delayed, the court shall enter an order stating the reason for the delay upon the court's records. The delay in passing sentence does not deprive the court of jurisdiction to sentence the defendant at any time during the period of delay.

also stated that if defendant made every monthly payment, but the arrearage was not completely paid within one year, defendant would be permitted to withdraw his plea and enter a plea to a misdemeanor charge. Once the trial court accepted defendant's plea induced by this agreement, it was required to abide by the terms of the agreement. *People v Arriaga*, 199 Mich App 166, 168; 501 NW2d 200 (1993). Thus, the trial court was without authority to alter the terms of the agreement at the delayed sentencing hearing.

People v Boynton, 185 Mich App 669; 463 NW2d 174 (1990), involved facts similar to this case. In that case, the defendant, who was convicted at a bench trial, was given a delayed sentence under MCL 771.1(2). *Boynton, supra* at 670. At the delayed sentencing hearing, the trial court determined that the defendant had fulfilled the conditions of the delayed sentence and granted his motion to dismiss the case. *Id.* This Court held that under MCL 771.1(2), sentencing may be delayed for up to one year, after which the trial court loses jurisdiction to sentence the defendant unless good cause for the delay is shown. *Boynton, supra* at 671. The Court held that because the trial court waited until after the expiration of the one-year period, it lost jurisdiction to sentence the defendant. *Id.* Regarding the prosecutor's specific challenge to the trial court's dismissal of the conviction, however, this Court stated that a trial court's authority "to dismiss or expunge a properly obtained criminal conviction is specifically set forth in MCL 780.621," which provides prerequisites and specific procedural steps for taking such action. *Boynton, supra*. Because the trial court failed to adhere to the procedures outlined in the statute, this Court vacated the trial court's order of dismissal and reinstated the defendant's conviction. *Id.*

Thus, even if the trial court in the instant case was not obligated to abide by the terms of the plea agreement, it was required to follow the prerequisites of MCL 780.621 before dismissing defendant's conviction. Defendant pleaded guilty to a felony charge of failure to pay child support and thus stood convicted of that offense at the delayed sentencing hearing. The order of delayed sentence made clear that it would be necessary for defendant to withdraw his plea if he satisfied all the requirements of the delayed sentence in accordance with the plea agreement. In fact, defendant would remain convicted of the offense even if no delayed sentencing hearing had been held. *People v Dubis*, 158 Mich App 504, 507; 405 NW2d 181 (1987). Thus, in order to dismiss the conviction, it was necessary for the trial court to follow the procedure outlined in MCL 780.621 for setting aside convictions. *Boynton, supra* at 671. Accordingly, even if the trial court had not been required to follow the terms of the plea agreement, it erred by dismissing the conviction without adhering to MCL 780.621.

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

/s/ William B. Murphy
/s/ David H. Sawyer
/s/ Patrick M. Meter