

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

V

CURRAN DELAND WILSON,

Defendant-Appellant.

UNPUBLISHED

December 21, 2010

No. 294056

Genesee Circuit Court

LC No. 08-022146-FC

Before: BECKERING, P.J., and TALBOT and OWENS, JJ.

MEMORANDUM.

Defendant entered a plea of guilty to a charge of armed robbery, MCL 750.529, and was sentenced to 108 to 300 months in prison. However, based on a corrected scoring of the sentencing guidelines, he was resentenced to 35 to 300 months in prison. This Court granted defendant's delayed application for leave to appeal. We now affirm. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

Defendant argues that the court did not abide by a plea agreement to sentence him towards the middle of the sentencing guidelines range. He seeks specific performance of the agreement.

If the trial court accepts a plea induced by an agreement with the prosecutor, then the terms of the agreement must be fulfilled. *Santobello v New York*, 404 US 257, 262; 92 S Ct 495; 30 L Ed 2d 427 (1971). "If the evidence establishes that the prosecutor or the judge has made a statement which fairly interpreted by the defendant . . . is a promise of leniency, and the assurance is unfulfilled, the plea may be withdrawn and the case proceed to trial." *In re Valle*, 364 Mich 471, 477-478; 110 NW2d 673 (1961). However, in *People v Schluter*, 204 Mich App 60, 67; 514 NW2d 489 (1994), this Court noted that "where a trial court substantially fails to fulfill a plea agreement, a reviewing court has discretion to choose between vacating the plea or ordering specific performance, with the defendant's choice accorded considerable weight." A breach of a plea bargain involves a constitutional right rooted in the due process clause. *People v Gallego*, 430 Mich 443, 449; 424 NW2d 470 (1988). Questions involving constitutional issues are reviewed de novo. *People v LeBlanc*, 465 Mich 575, 579; 640 NW2d 246 (2002).

At the plea hearing there was some discussion regarding whether the judge was likely to sentence defendant somewhere in the middle of the guidelines range as preliminarily calculated by the prosecutor and the defense attorney. However, the plea agreement actually stated on the

record by the judge and the attorneys and confirmed by the defendant was simply to sentence defendant within the guidelines range. The ultimate guidelines range was not consistent with the attorneys' calculation. However, the sentence was within the guidelines range. Thus, the sentence comported with the agreement.

Affirmed.

/s/ Jane M. Beckering

/s/ Michael J. Talbot

/s/ Donald S. Owens