

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff-Appellee,

UNPUBLISHED
April 10, 2012

v

LORISSA MULLEN,

No. 303415
Oakland Circuit Court
LC No. 2010-232120-FH

Defendant-Appellant.

Before: WILDER, P.J., and O'CONNELL and WHITBECK, JJ.

PER CURIAM.

Defendant appeals by delayed leave granted¹ her no-contest plea conviction of uttering and publishing, MCL 750.249. Defendant was sentenced, as a fourth habitual offender, MCL 769.12, to 2 to 20 years' imprisonment for the uttering and publishing conviction. We affirm.

Defendant argues that she is entitled to specific performance of the trial court's preliminary evaluation of her sentence under *People v Cobbs*, 443 Mich 276; 505 NW2d 208 (1993), or to withdraw her plea, because the sentence imposed exceeds the court's preliminary evaluation under *Cobbs*. We disagree. Defendant waived any right to either receive the sentence reflected in the preliminary evaluation or withdraw her plea, when she failed to appear for her presentence interview and for sentencing.

A motion to withdraw a plea after sentencing is reviewed for a clear abuse of discretion resulting in a miscarriage of justice. *People v Adkins*, 272 Mich App 37, 38; 724 NW2d 710 (2006). "An abuse of discretion occurs when the decision results in an outcome falling outside the range of principled outcomes." *People v Fonville*, 291 Mich App 363, 376; 804 NW2d 878 (2011). Whether the court is legally required to adhere to the sentence contained in a *Cobbs* agreement is a matter of law. Questions of law are reviewed de novo. *People v Connor*, 209 Mich App 419, 423; 531 NW2d 734 (1995).

¹ *People v Mullen*, unpublished order of the Court of Appeals, entered May 18, 2011 (Docket No. 303415).

In *Cobbs*, 443 Mich at 283, our Supreme Court held that a trial court may provide a preliminary evaluation of the length of a sentence to a defendant who pleads guilty or no contest:

At the request of a party, and not on the judge's own initiative, a judge may state on the record the length of sentence that, on the basis of the information then available to the judge, appears to be appropriate for the charged offense.

* * *

The judge's preliminary evaluation of the case does not bind the judge's sentencing discretion, since additional facts may emerge during later proceedings, in the presentence report, through the allocution afforded to the prosecutor and the victim, or from other sources. However, a defendant who pleads guilty or nolo contendere in reliance upon a judge's preliminary evaluation with regard to an appropriate sentence has an absolute right to withdraw the plea if the judge later determines that the sentence must exceed the preliminary evaluation. [Emphasis removed.]

In *People v Garvin*, 159 Mich App 38, 40; 406 NW2d 469 (1987), the defendant escaped from custody following his guilty plea but before sentencing. The defendant argued on appeal that he should have been allowed to withdraw his guilty plea when the trial court refused to sentence him in accordance with a plea agreement that included a sentence recommendation. *Id.* at 2. Although *People v Killebrew*, 416 Mich 189, 194-195; 330 NW2d 834 (1982), provides that a defendant has a right to withdraw his plea if the trial court rejects the proffered bargain or chooses not to follow the prosecutor's sentence recommendation, this Court held in *Garvin* that "the right to withdraw a plea is not absolute." *Garvin*, 159 Mich App at 42-43.

The present case lies outside the parameters of *Killebrew*. Here, defendant implicitly waived his right to withdraw the guilty plea when he escaped. The sentence recommendation contemplated that no intervening factors would occur between the plea and the sentencing. Thus, had defendant pled guilty and remained for sentencing and the court failed to follow the recommended sentence, we would have no problem remanding this case to allow defendant the opportunity to withdraw the plea. *Killebrew, supra*. However, this is not the case. Instead, we have an intervening event caused by defendant; he escaped prior to sentencing. Defendant implicitly waived his right to withdraw his plea by escaping and also provided a justification for a longer sentence than originally recommended. Thus, the court did not abuse its discretion in denying defendant's motion to withdraw his plea. [*Id.* at 43.]

In *People v Kean*, 204 Mich App 533, 535; 516 NW2d 128 (1994), the defendant entered a plea agreement with a sentence recommendation. As part of the agreement, the defendant agreed to enter an in-house drug alcohol residential treatment center or report to a sheriff's department. *Id.* After pleading guilty, the defendant entered a treatment program but then walked away from the program a week later and did not turn himself in to the sheriff or appear for his presentence interview or for sentencing. *Id.* This Court agreed with the trial court "that

by walking away from the treatment program and by not turning himself in, defendant had violated the plea agreement and, consequently, that he was not entitled to the benefit of the bargain.” *Id.* at 535-536. Noting that “the right to withdraw a plea is not absolute[.]” the *Kean* Court found the case “sufficiently similar to *Garvin* to uphold the trial court’s denial of defendant’s motion to withdraw his plea.” *Id.* at 536. See also *People v Acosta*, 143 Mich App 95, 99; 371 NW2d 484 (1985) (holding that a defendant may not benefit from a plea bargain irrespective of his “bad faith in failing to comply with the bargain by failing to appear.”).

Here, defendant waived the right to withdraw her plea or to receive the benefit of the *Cobbs* evaluation, when she failed to appear for her presentence interview and for sentencing. As an explicit condition of the *Cobbs* evaluation, defendant was required to appear at her presentence interview and at the sentencing hearing. At the plea hearing, the following exchange occurred between the trial court and defendant:

THE COURT: I’ve made a representation to you pursuant to the Michigan Supreme Court case of *People v Cobbs* that if you were to plead no contest that any term of incarceration that you would receive would not exceed time in the Oakland County Jail, do you understand that?

MS. MULLEN: Yes, Sir.

THE COURT: Do you understand that I will only be required to follow my representation pursuant to *People v Cobbs* if you abide by all the terms and conditions of your bond, you timely appear for your presentence interview and sentencing, and you not test positive for drugs and you do not engage in criminal behavior prior to sentencing?

MS. MULLEN: Yes, Sir.

The record thus reflects defendant’s agreement that the preliminary sentencing evaluation would bind the trial court only if defendant complied with certain conditions, among which were that she appear for her presentence interview and for sentencing. Defendant violated those conditions when she absconded. Accordingly, in light of defendant’s intervening misconduct between the plea hearing and sentencing, she waived any right to receive the benefit of the *Cobbs* evaluation or to withdraw her plea. *Kean*, 204 Mich App 533, 535-536; *Garvin*, 159 Mich App at 42-43.

Finally, defendant’s brief on appeal suggests that she is entitled to specific performance of the *Cobbs* evaluation or to plea withdrawal because the trial court failed to advise defendant at the plea hearing that she had a right to withdraw her plea if the court later determined that it could not follow its *Cobbs* evaluation. Defendant has failed to develop this argument or to cite supporting authority. “An appellant may not merely announce his position and leave it to this Court to discover and rationalize the basis for his claims, nor may he give only cursory treatment of an issue with little or no citation of supporting authority.” *People v Schumacher*, 276 Mich App 165, 178; 740 NW2d 534 (2007) (internal quotations and punctuation omitted).

Accordingly, this issue is deemed abandoned. *Id.*

Affirmed.

/s/ Kurtis T. Wilder
/s/ Peter D. O'Connell
/s/ William C. Whitbeck