

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ELDRIN LEROY WILLIAMS,

Defendant-Appellant.

UNPUBLISHED

January 31, 1997

No. 193813

Saginaw Circuit Court

LC No. 95-10228-FH-5

Before: Gribbs, P.J., and Holbrook, Jr., and J. L. Martlew,* JJ.

PER CURIAM.

Pursuant to a plea bargain agreement, defendant pled nolo contendere to attempted arson, MCL 750.72; MSA 28.267, MCL 750.92; MSA 28.287, and habitual offender, third offense, MCL 769.11; MSA 28.1083. Under the terms of the agreement, the prosecutor agreed to recommend a “12 month cap” on defendant’s sentence. Defendant was sentenced to a term of one to ten years. We affirm.

First, defendant argues that the trial court erred in making his sentence consecutive to his parole. *People v Young*, 206 Mich App 144; 521 NW2d 340 (1994). This issue is rendered moot by our Supreme Court’s reversal of *Young*, 451 Mich 569; 548 NW2d 900 (1996). In light of defendant’s extensive prior record, the trial court did not err in failing to consider a term in county jail rather than prison.

Defendant also contends that the prosecutor breached his agreement by recommending a twelve month minimum sentence and by suggesting that the trial court could sentence defendant to a greater minimum term. This issue is meritless. The sentence agreement, as stated on the record by the trial court, was as follows:

* Circuit judge, sitting on the Court of Appeals by assignment.

THE COURT: ...Further, the prosecutor is going to recommend to the Court that the maximum minimum sentence to be imposed be not less than or not more than one year. Is that your understanding of the plea agreement?

THE DEFENDANT: Yes, sir.

The trial court also informed defendant at the plea hearing that sentencing is the exclusive province of the trial court and that the court had the discretion to decline the prosecutor's recommendation. The prosecutor did not breach the plea agreement by asking for a twelve month minimum term, or by acknowledging the trial court's discretion.

Finally, there is no merit to defendant's claim that the trial court abused its discretion by sentencing defendant to a maximum term of ten years. Defendant's sentence is proportionate to the offender and the offense. *People v Milbourn*, 435 Mich 630; 461 NW2d 1 (1990).

Affirmed.

/s/ Roman S. Gibbs

/s/ Donald E. Holbrook, Jr.

/s/ Jeffrey L. Martlew