

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

MICHAEL EDWARD FISHER

Defendant-Appellee.

UNPUBLISHED

January 29, 1999

No. 203465

Tuscola Circuit Court

LC No. 96-007029 FH

Before: Hood, P. J. and Neff and Markey, JJ.

MEMORANDUM

The prosecutor appeals as of right from an order imposing sanctions for noncompliance with the pretrial order in this case. The order provided that “[n]o offer of plea will be accepted by the Court less than 14 days before the trial date.” Eight days past the plea cut-off date, the parties submitted a stipulation to remand the case to the district court where defendant was going to plead to a misdemeanor offense. The trial court concluded that this violated the order. We reverse.

The prosecution first argues that by stipulating to a remand to the district court, it did not violate the literal language of the pretrial order and therefore could not be held in contempt. In order to support a criminal contempt conviction, the contempt must be clearly and unequivocally shown beyond a reasonable doubt. *In re Contempt of O’Neil*, 154 Mich App 245, 247; 397 NW2d 191 (1986). Due process rights and statutes further govern the proper procedure for determining and punishing contumacious behavior.

By stipulating to a remand to district court for the purpose of offering a plea there, the prosecution arguably violated the spirit of the order. However, it did not violate the literal language of the order because it did not offer a plea to the circuit court.

It is a basic principle of due process that a legislative enactment is void for vagueness if the enactment does not provide fair notice of the conduct proscribed. To give fair notice of proscribed conduct, a statute must give a person of ordinary intelligence a reasonable opportunity to know what is prohibited. The statute cannot

use terms that require persons of common intelligence to guess at the statute's meaning and differ regarding its application. [*People v Perez-DeLeon*, 224 Mich App 43, 46-47; 568 NW2d 324 (1997), quoting *Sanchez v Lagoudakis*, 217 Mich App 535, 555; 552 NW2d 472 (1996) (citations omitted).]

While it is an order, not a statute, at issue here, we conclude that the same rule governs. Because the prosecutor could reasonably have read the order as not applying to the entry of a plea in district court, the trial court erred in holding the prosecution in contempt.

Because we conclude that the prosecution did not commit a contumacious act, we need not address whether the trial court followed the proper procedures in sanctioning the prosecutor for contempt.

Reversed.

/s/ Harold Hood

/s/ Janet T. Neff

/s/ Jane E. Markey