

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

RICARDO WADE TOLSON,

Defendant-Appellant.

UNPUBLISHED

June 20, 2000

No. 217224

Oakland Circuit Court

LC No. 98-160760-FC

Before: Gribbs, P.J., and Doctoroff and T.L. Ludington*, JJ.

MEMORANDUM.

Defendant appeals by delayed leave granted his guilty plea based conviction for armed robbery, MCL 750.529; MSA 28.797. We remand to allow defendant to withdraw his plea of guilty. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant pleaded guilty to armed robbery subject to a sentence evaluation under *People v Cobbs*, 443 Mich 276; 505 NW2d 208 (1993). The court agreed that it would sentence defendant within the middle of the guidelines range. Defense counsel stated that he understood the range to be 12 to 48 months. The court accepted the plea.

Prior to sentencing, the guidelines range was computed at 36 to 96 months. Defendant did not object to the guidelines calculations, and agreed that the plea provided for a sentence in the middle of the guidelines range. The court stated that the sentence of 4 to 20 years was within the *Cobbs* plea agreement. Defendant did not object to the sentence.

On appeal, defendant argues that the trial court did not comply with the *Cobbs* agreement, and that it failed to give him the opportunity to withdraw his plea. We agree. Defendant agreed to plead guilty on the basis of information that he would be sentenced in the middle of a guidelines range of 12 to 48 months in prison. However, defendant was later sentenced to a minimum term of four years in prison. “[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

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

later determines that the sentence must exceed the preliminary evaluation.” *Cobbs, supra* at 283. We therefore reverse and remand to allow defendant to withdraw his guilty plea. Defendant's motion to withdraw his guilty plea must be made within 28 days of receiving this opinion.

Because we have already concluded that defendant is entitled to withdraw his plea of guilty, we need not address defendant's claim that he was denied the effective assistance of counsel.

Remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Roman S. Gibbs

/s/ Martin M. Doctoroff

/s/ Thomas L. Ludington