

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DOUGLAS L. CRAWFORD,

Defendant-Appellant.

UNPUBLISHED
December 2, 2003

No. 241069
Oakland Circuit Court
LC No. 92-120398-FC

Before: Murray, P.J., and Gage and Kelly, JJ.

MEMORANDUM.

Defendant appeals as of right his plea-based conviction for delivery of more than 50 but less than 225 grams of cocaine, MCL 333.7401(2)(a)(iii). We reverse and remand for resentencing. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

After defendant's jury conviction was reversed by the Supreme Court, *People v Crawford*, 458 Mich 376; 582 NW2d 785 (1998), he entered a guilty plea pursuant to a plea bargain. The agreement provided that defendant would be sentenced to a term of 17½ to 20 years' imprisonment. Defendant was sentenced in accord with the agreement, even though the parties recognized the sentence was in violation of *People v Tanner*, 387 Mich 683; 199 NW2d 202 (1972). The trial court denied defendant's motion for resentencing, finding that he waived the protection of *Tanner*.

Where a court imposes a sentence that is partially invalid, the Legislature has provided that the sentence is not to be wholly reversed and annulled, but is to be set aside only in respect to the unlawful excess. MCL 769.24; *People v Thomas*, 447 Mich 390, 393; 523 NW2d 215 (1994). In every reported instance of a *Tanner* violation, the Court has directed that the minimum sentence be reduced to two-thirds the maximum sentence. *Id.* at 392.

Had the trial court found that it could not sentence defendant in accord with the plea bargain, it would be required to give the prosecutor the opportunity to withdraw from the plea agreement. *People v Siebert*, 450 Mich 500; 537 NW2d 891 (1995). However, plaintiff has cited no authority that would allow a prosecutor to withdraw from a plea bargain when a sentence is modified on appeal.

Reversed and remanded for modification of the minimum sentence to comply with *Tanner, supra*. We do not retain jurisdiction.

/s/ Christopher M. Murray
/s/ Hilda R. Gage
/s/ Kirsten Frank Kelly