

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DENNIS ALEXANDER,

Defendant-Appellant.

UNPUBLISHED

March 12, 2009

No. 280990

Wayne Circuit Court

LC No. 07-006069-01

Before: Cavanagh, P.J., and Jansen and Meter, JJ.

JANSEN, J. (*dissenting*).

I conclude that the trial court plainly erred by failing to inform defendant of the right to withdraw his guilty pleas. Therefore, I respectfully dissent.

Defendant was charged with several firearm-related offenses, and the prosecution filed a notice of intent to seek enhancement of defendant's sentences under the habitual offender statutes. See MCL 769.13. Thereafter, the prosecution offered to dismiss one of the criminal charges and the habitual-offender notice if defendant would plead guilty to possession of a firearm during the commission of a felony (felony-firearm), MCL 750.227b, and possession of a firearm by a felon (felon-in-possession), MCL 750.224f. Defendant received a *Cobbs*¹ preliminary evaluation of two years in prison for the felony-firearm conviction, with no additional prison time for the felon-in-possession conviction. Following defendant's pleas, defense counsel asked for reinstatement of the bond, stating that he had informed defendant that his sentence could be harsher if defendant did not appear for sentencing. The trial court reinstated the bond, but admonished defendant that if he did not appear, the court would consider what he had done in the meantime at the time of sentencing.

Defendant did not appear for the original sentencing date. Instead, other people presented a false death certificate bearing defendant's name and other false documents to the trial court. When defendant was ultimately apprehended and sentenced, the trial court sentenced him to 1½ to 5 years in prison for the felon-in-possession conviction. The court did not inform defendant of the right to withdraw his guilty pleas.

¹ *People v Cobbs*, 443 Mich 276; 505 NW2d 208 (1993).

The trial court apparently believed that defendant was involved in a fraud upon the court by having false documents presented at the time of sentencing. Under these circumstances, I agree that the court was not bound by the *Cobbs* preliminary evaluation. However, because the trial court did not intend to follow the *Cobbs* evaluation, it was required to inform defendant that he had the absolute right to withdraw his pleas. *People v Cobbs*, 443 Mich 276, 283; 505 NW2d 208 (1993). I conclude that the trial court plainly erred by failing to explain this right to defendant and by failing to give him the opportunity to withdraw his pleas. See *People v Killebrew*, 416 Mich 189, 209-210; 330 NW2d 834 (1982). Defendant should have been given the opportunity to withdraw his guilty pleas and to proceed to trial on the charges against him. Accordingly, I would reverse.

/s/ Kathleen Jansen