

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

---

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

LEON DUANE BRIDINGER,

Defendant-Appellant.

---

UNPUBLISHED

January 4, 2011

No. 294616

Ionia Circuit Court

LC No. 2008-014209-FH

Before: DONOFRIO, P.J., and CAVANAGH and FITZGERALD, JJ.

PER CURIAM.

Defendant appeals by delayed leave granted the sentence of 14 months to four years in prison imposed on his no contest plea-based conviction for resisting and obstructing a police officer causing injury, MCL 750.81d(2). We affirm. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

Defendant was charged with identity theft and resisting and obstructing a police officer causing injury. Defendant subsequently entered into a plea agreement with the prosecution pursuant to which in return for defendant pleading guilty to the resisting and obstructing charge, the prosecutor agreed to drop the remaining charge, to agree that defendant would not be sentenced as an habitual offender, and to agree that any incarceration would be capped at 12 months in the county jail. After pleading guilty, but before sentencing, defendant was released on bond so that he could resolve charges unrelated to the instant appeal. Defendant's sentencing was scheduled for February 24, 2009, and then adjourned to February 25, 2009, at defendant's request. However, defendant failed to appear, and a warrant was issued for defendant's arrest on February 26, 2009. Defendant was apprehended on March 22, 2009, and sentencing occurred on March 24, 2009. During sentencing, defense counsel stated that defendant "recognizes that the opportunity to stay with the jail sentence was lost given his failure to appear and his violation of bond[.]" and asked the court for a 12-month minimum. The trial court stated that defendant had

lost the benefit of the *Killebrew*<sup>1</sup> agreement, and imposed a sentence of 14 months to four years. The trial court denied defendant's motion for resentencing.

On appeal, defendant argues that he is entitled to specific performance of the sentence portion of his plea agreement. While defendant couches this issue in terms of a right to specific performance, we note that as to the imposition of a sentence, a defendant does not have a right to specific performance of a *Killebrew* plea bargain, which is an agreement between the prosecution and the defense. "The judge retains his freedom to choose a different sentence." *People v Killebrew*, 416 Mich 189, 209; 330 NW2d 834 (1982). Instead, defendant must choose between withdrawing his plea, or accepting the trial court's sentencing decision. *Id.* at 209-210. The instant question, therefore, is more properly whether the trial court should have allowed defendant to withdraw his plea. A trial court's denial of a defendant's motion to withdraw a guilty plea is generally reviewed for an abuse of discretion. *People v Harris*, 224 Mich App 130, 131; 568 NW2d 149 (1997). An abuse of discretion occurs when the trial court's decision falls outside a range of principled outcomes. See *People v Babcock*, 469 Mich 247, 269; 666 NW2d 231 (2003).

Once a plea of guilty or nolo contendere has been accepted by the trial court, the defendant has no absolute right to withdraw it. *People v Eloby (After Remand)*, 215 Mich App 472, 474-475; 547 NW2d 48 (1996); *People v Gomer*, 206 Mich App 55, 56; 520 NW2d 360 (1994). A court may permit a plea to be withdrawn in the interest of justice before sentencing unless withdrawal of the plea would substantially prejudice the ability to prosecute the defendant because of the prosecutor's reliance on the plea. MCR 6.310(B)(1). In the absence of a procedural error in receiving the plea, a defendant must establish a fair and just reason for withdrawal of the plea. *Harris*, 224 Mich App at 131; *People v Jackson*, 203 Mich App 607, 611; 513 NW2d 206 (1994). Fair and just reasons for withdrawal include if the plea resulted from fraud, duress, or coercion, *Gomer*, 206 Mich App at 58, if the plea involved erroneous legal advice coupled with actual prejudice to legal rights, *People v Jackson*, 417 Mich 243, 246; 334 NW2d 371 (1983); *People v Shannon*, 134 Mich App 35, 38; 349 NW2d 813 (1984), or if the bargain on which the plea was based was illusory, i.e., the defendant received no benefit from the bargain, *Harris*, 224 Mich App at 132. If the facts of the case indicate that the plea was voluntary, it will be upheld regardless whether the defendant received consideration in return. *Id.* at 132-133.

MCR 6.310(B)(2)(a) and (b) provide that a defendant is entitled to withdraw the plea if the plea involves a prosecutorial sentence recommendation or agreement for a specific sentence and the court finds that it is unable to follow the agreement or recommendation, or if the trial court states that it will sentence defendant to a specified term or within a specified range and then finds that it is unable to do so. See, also, *Killebrew*, 416 Mich at 209-210. However, when a defendant does not live up to his part of a plea agreement, this Court has held that he is not entitled to specific performance of his plea and that he does not have a right to withdraw it. See

---

<sup>1</sup> *People v Killebrew*, 416 Mich 189, 209; 330 NW2d 834 (1982).

*People v Abrams*, 204 Mich App 667, 672; 516 NW2d 80 (1994), citing *People v Walton*, 176 Mich App 821, 825-826; 440 NW2d 114 (1989). See, also, *People v Garvin*, 159 Mich App 38, 44; 406 NW2d 469 (1987).

In *People v Kean*, 204 Mich App 533; 516 NW2d 128 (1994), this Court discussed whether a defendant is entitled to withdraw his plea bargain when he does not comply with the terms of that agreement, notwithstanding *Killebrew*'s holding that a defendant should be allowed to withdraw a plea when the trial court finds that it cannot, or does not wish to, comply with the sentence agreement between the prosecution and the defense. In *Kean*, the defendant's plea agreement recommended a sentence of five to 20 years. As part of the agreement, the defendant promised that "within twenty-four hours from the date of the taking of this plea the Defendant will be in a twenty-four hour in-house drug alcohol residential treatment center or he will report to the Kalamazoo County Sheriff's Department." The agreement specified that the treatment program would be a "twenty-four hour, seven-day-a-week program wherein the defendant will not be released from the care and custody of those individuals prior to sentencing." The defendant pleaded guilty, and entered a qualifying program within twenty-four hours of his plea. However, a week later he walked away from the program, and did not appear for his presentence investigation interview or for sentencing. He was arrested more than two and one-half years later. *Kean*, 204 Mich App at 535. The trial court found that by walking away from the treatment program and by not turning himself in, the defendant had violated the plea agreement and, consequently, was not entitled to the benefit of the bargain. A majority of this Court agreed. The majority found that the defendant's actions after entering the plea acted as a waiver of his right to withdraw:

In *People v Killebrew*, 416 Mich 189, 209-210; 330 NW2d 834 (1982), our Supreme Court held that when a trial court decides not to follow a sentence recommendation that is part of a plea agreement, it must give the defendant an opportunity to withdraw his plea before imposing the sentence. However, the right to withdraw a plea is not absolute. *People v Wilkens*, 139 Mich App 778, 785; 362 NW2d 862 (1984). In *People v Garvin*, 159 Mich App 38; 406 NW2d 469 (1987), this Court held that a defendant implicitly waives his right to withdraw a guilty plea when he escapes from custody. There, as here, the "sentencing recommendation contemplated that no intervening factors would occur between the plea and the sentencing." *Id.* at 43. We believe that this case is sufficiently similar to *Garvin* to uphold the trial court's denial of defendant's motion to withdraw his plea. [*Kean*, 204 Mich App 536.]

Here, while defendant acknowledges that an individual who violates a specific condition of his plea agreement is not entitled to specific performance, he maintains that his failure to appear for sentencing "may have violated his bond conditions but did not violate any specific condition of the plea agreement." The parties discuss whether the rule pertains to only specifically expressed plea conditions, or also to all cases in which a defendant escapes from custody before sentencing. However, it is unnecessary to resolve such an argument in this case because defendant was aware of the specific condition that he appear for sentencing, as well as the consequences should he not do so. As the trial court noted, defendant signed the advice of rights form in which defendant indicated that he understood he would be giving up a number of rights. Among these, the form contained a specific paragraph informing defendant:

If you plead guilty or no contest pursuant to a Killebrew or Cobbs agreement, you will be allowed to withdraw your plea if the court does not follow the agreement **unless** you violate the plea agreement or are in non-compliance with a court order, including a condition of bond. If you violate the plea agreement or a court order, including a condition of bond, you give up your right to withdraw your plea if the judge does not follow the Killebrew or Cobbs agreement.

The bond agreement that defendant signed specifically stated, among its own conditions:

1. I will personally appear for any examination, arraignment, trial, *or sentencing*. . . .

\* \* \*

4. I will not commit any crime while released.

Therefore, contrary to defendant's contention, being present for sentencing and not absconding was, in fact, a specific term of his plea agreement. While the trial court did not reiterate all of the conditions orally, the trial court specifically asked defendant whether he had read and understood the advice of rights form that he had signed, and defendant replied affirmatively. Defendant's contention that he did not violate a specific condition of his plea is without merit, as is his contention that he was never informed that he would suffer the loss of his sentencing bargain if he failed to appear for sentencing.

Affirmed.

/s/ Pat M. Donofrio  
/s/ Mark J. Cavanagh  
/s/ E. Thomas Fitzgerald