

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

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ANDRE SPILLERS, JR.,

Defendant-Appellant.

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UNPUBLISHED

November 24, 2020

No. 350358

Genesee Circuit Court

LC No. 17-042168-FC

Before: JANSEN, PJ., and FORT HOOD and RONAYNE KRAUSE, JJ.

PER CURIAM.

Defendant entered a no-contest plea to three counts of first-degree criminal sexual conduct (CSC-I), MCL 750.520b (multiple variables), and one count each of kidnapping, MCL 750.349; torture, MCL 750.85; interference with an electronic communications device causing injury (IECD), MCL 750.540(5)(b); armed robbery, MCL 750.529; unlawfully driving away an automobile (UDAA), MCL 750.413; domestic violence, MCL 750.81(2); and possession of a firearm during the commission of a felony (felony-firearm), MCL 750.227b. Defendant was sentenced to concurrent terms of 93 days' imprisonment for domestic violence; one to five years' imprisonment for UDAA; one to four years' imprisonment for IECD; and 7 to 15 years' imprisonment for CSC-I, kidnapping, torture, and armed robbery, and to a consecutive term of two years' imprisonment for felony-firearm. On August 20, 2019, the circuit court denied defendant's motion to withdraw his plea. Defendant appeals by leave granted. We reverse and remand for proceedings consistent with this opinion.

I. PROCEDURAL BACKGROUND

The district court bound defendant over on 17 charges, and over the next year, defendant negotiated a plea agreement. On January 23, 2019, defendant agreed that he would plead no contest to charges of kidnapping, CSC-I, torture, IECD, armed robbery, UDAA, domestic violence, and one count of felony-firearm, in exchange for the dismissal of seven additional felony-firearm charges and a sentence at the lower end of the guidelines range. The plea agreement did not list the felony-firearm charge and defendant did not enter a plea to the charge on the record. The circuit court asked defense counsel whether the CSC-I charges had a mandatory lifetime

electronic monitoring (LEM) requirement and defense counsel agreed. Defendant was present during this exchange, but the court did not confirm with defendant that he understood the LEM requirement.

On February 26, 2019, the day of sentencing, the prosecutor stated that defendant had not entered a plea with respect to felony-firearm, and defense counsel agreed that he had discussed the “glitch” in the plea with defendant. The circuit court swore defendant in and offered defendant an opportunity to enter a plea on the charge of felony-firearm. Defendant agreed that he wanted to plead no contest to the felony-firearm charge and entered the plea. The court asked defendant whether he had forgotten any of the rights he had been advised of when he entered his previous plea. Defendant agreed that he had not forgotten his rights and that he wished the waiver of rights to apply to the felony-firearm charge. The circuit court found defendant’s plea knowing and voluntary. Defendant filed a motion to withdraw his plea on August 12, 2019, which the circuit court denied.

## II. ANALYSIS

Defendant argues that his plea was not knowing and voluntary because the trial court did not specifically advise him of the LEM requirement that accompanied convictions for CSC-I. We agree.

We review for abuse of discretion a trial court’s decision on whether to grant plea withdrawal. *People v Willhite*, 240 Mich App 587, 594; 618 NW2d 386 (2000). A trial court abuses its discretion when it chooses an outcome that falls outside the range of principled outcomes. *People v Fonville*, 291 Mich App 363, 376; 804 NW2d 878 (2011).

The Michigan Supreme Court has explained that mandatory LEM is not only part of the sentence for CSC, but also a direct consequence of a defendant’s no-contest plea. *People v Cole*, 491 Mich 325, 328-329; 817 NW2d 497 (2012). For a plea to be knowing and voluntary, a defendant must be “fully aware of the direct consequences” of the plea. *Brady v United States*, 397 US 742, 755; 90 S Ct 1463; 25 L Ed 2d 747 (1970). Therefore, “due process requires the trial court to inform the defendant entering the plea that he or she will be subject to mandatory lifetime electronic monitoring . . . at the time of the plea hearing in order to satisfy the court rule’s requirement that the plea be understanding and voluntary.” *Cole*, 491 Mich at 337. MCR 6.302 additionally provides, in relevant part:

(A) Plea Requirements. The court may not accept a plea of guilty or nolo contendere unless it is convinced that the plea is understanding, voluntary, and accurate. Before accepting a plea of guilty or nolo contendere, the court must place the defendant or defendants under oath and personally carry out subrules (B)-(E).

(B) An Understanding Plea. Speaking directly to the defendant or defendants, the court must advise the defendant or defendants of the following and determine that each defendant understands:

(1) the name of the offense to which the defendant is pleading; the court is not obliged to explain the elements of the offense, or possible defenses;

(2) the maximum possible prison sentence for the offense and any mandatory minimum sentence required by law, *including a requirement for mandatory lifetime electronic monitoring* under MCL 750.520b or 750.520c. [Emphasis added.]

In this case, the trial court did not comply with the requirements of MCR 6.302. The circuit court only confirmed with defense counsel that the CSC-I convictions carried LEM requirements. Although defendant was present during this discussion, there is no indication from the record that the trial court ever addressed the LEM requirement directly with defendant or informed him of the requirement. This contradicts the plain language of MCR 6.302(B), which requires that the court speak “directly to the defendant” and advise him of “the maximum possible prison sentence for the offense . . . including a requirement for mandatory lifetime electronic monitoring.” MCR 6.302(B). MCR 6.302(B)(2) mandates that the court must “personally carry out subrules (B)-(E)” and inform defendant of the consequences of his plea. The rule does not place a burden on defendant to inquire into any sentence requirements. Defendant’s plea was not knowing and voluntary because the court did not ensure that defendant was fully aware of the consequences of his plea. Therefore, the circuit court abused its discretion by refusing to allow defendant to withdraw his plea.

We note that this error entitles defendant to withdraw his entire plea. Where the circumstances suggest that a plea to multiple offenses is intended as a “package deal” as opposed to multiple separate pleas, a defect that might ordinarily relate to only one charge affects the entirety of the plea. See *People v Blanton*, 317 Mich App 107, 126; 894 NW2d 613 (2016). The prosecution suggests on appeal that defendant’s felony-firearm plea could be treated separately because it was, in fact, taken after defendant’s plea to the other charges. However, the prosecution also concedes that this was in error, and that the felony-firearm charge “was contemplated as part of the plea agreement at the plea hearing because it was discussed as part of the sentencing proposal and in the recitation of the factual basis for the plea.” Thus, we are not inclined to treat defendant’s felony-firearm plea as though it was unaffected by the defect in the plea-taking process. Because the plea arrangement in this case was “indivisible,” and the overall arrangement represented a “package deal” between defendant and the prosecution, the defect in the plea-taking process entitles defendant to withdraw his entire plea.

Reversed and remanded for proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Kathleen Jansen  
/s/ Karen M. Fort Hood  
/s/ Amy Ronayne Krause