STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JAYME LYNN LAPOINT,

Defendant-Appellant.

UNPUBLISHED
December 16, 2021

No. 353235
Branch Circuit Court
LC Nos. 18-112373-FC;
18-112374-FC

Before: GADOLA, P.J., and SWARTZLE and CAMERON, JJ.

PER CURIAM.

Defendant, Jayme LaPoint, appeals her plea-based convictions for first-degree criminal sexual conduct (CSC-I), MCL 750.520b(1)(a) (victim under 13 years of age); conspiracy to commit CSC-I, MCL 750.520b(1)(a) and MCL 750.157a(a); and conspiracy to commit kidnapping, MCL 750.349 and MCL 750.157a(a). Defendant was sentenced to 25 to 50 years' imprisonment for the CSC-I conviction, to 25 to 50 years' imprisonment for the conspiracy to commit CSC-I conviction, and to 70 months to 25 years' imprisonment for the conspiracy to commit kidnapping conviction. On appeal, defendant challenges the trial court's decision to deny her motions to withdraw her guilty pleas. We affirm.

I. BACKGROUND

The criminal charges in these cases arose as a result of law enforcement's investigation of David Bailey for possessing child sexually abusive material. Bailey was defendant's boyfriend at all relevant times. In July 2018, defendant agreed to speak with members of law enforcement, at which time she disclosed that she and Bailey had used electronic devices to access child pornography. Defendant also admitted that she took photographs of an infant she had babysat and sent them to Bailey. Specifically, defendant admitted that she had pulled the infant's legs apart and took photographs of the infant's vaginal area. Defendant also admitted that she had taken the infant to the home that she shared with Bailey and that they had sexually assaulted the infant multiple times. The infant was later identified as GS, who was 21 months old at the time of the assaults.

Child Protective Services (CPS) was contacted because the minor child Bailey shared with his ex-wife was located in the home that defendant shared with Bailey. Bailey's ex-wife later told law enforcement that she, defendant, Bailey, and two other people had made a plan to kidnap, rape, and murder a minor child in the summer of 2017. Defendant's cell phone was seized and searched pursuant to a search warrant, and evidence of defendant's sexual assault of GS was obtained.

In relation to Case No. 18-112373-FC, the Branch County Prosecutor's Office charged defendant with one count of CSC-I; one count of producing child sexually abusive activity or material, MCL 750.145c(2); one count of using a computer to commit a crime, MCL 752.796(1); and one count of distribution or promotion of child sexually abusive material, MCL 750.145c(3). In relation to Case No. 18-112374-FC, the Attorney General's Office charged defendant with conspiracy to commit first-degree murder, MCL 750.316(1) and MCL 750.157a(a); conspiracy to commit CSC-I; and conspiracy to commit kidnapping.

Defendant and the prosecutors reached plea agreements. In exchange for defendant pleading guilty to CSC-I, conspiracy to commit CSC-I, and conspiracy to commit kidnapping, the remaining charges would be dismissed. The prosecutors also agreed not to seek consecutive sentencing in the companion cases. The trial court accepted defendant's guilty pleas and sentenced defendant as described above.

Defendant filed a delayed application for leave to appeal from both judgments of sentence. Defendant also moved this Court to remand so that she could move the trial court to withdraw her guilty pleas. This Court granted defendant's application for leave to appeal, remanded the matter "to the trial court to allow defendant an opportunity to file . . . motion[s] to withdraw her guilty plea[s]," and retained jurisdiction. *People v LaPoint*, unpublished order of the Court of Appeals, entered February 24, 2021 (Docket No. 353235).

On remand, defendant moved the trial court to schedule a hearing so that the court could comply with MCR 6.310(C)(3) and provide defendant with an opportunity to withdraw her guilty pleas. Defendant argued that "her pleas were not knowingly and intelligently entered because they were based on the prosecution[s'] illusory promises of concurrent sentencing." Specifically, defendant argued that "she could not be required to serve the sentences in the two cases consecutively, with or without the agreement" because the CSC-I crime and the conspiracy crimes were "unrelated" and therefore "did not arise from the same transaction" as contemplated under MCL 750.520b(3). The prosecutors opposed the motions, arguing in relevant part that defendant had received benefits from the plea agreements. The trial court agreed with the prosecutors and denied defendant's motions.

II. ILLUSORY PLEA AGREEMENTS

Defendant argues on appeal that her right to due process was violated by the trial court's denial of her motions to withdraw her guilty pleas because the plea agreements were illusory. We disagree.

A. STANDARDS OF REVIEW

"We review issues of constitutional law de novo." *People v Parrott*, ___ Mich App ___, ___; ___ NW2d ___ (2021) (Docket No. 350380); slip op at 3 (quotation marks and citation omitted), lv pending. "Underlying questions of law are [also] reviewed de novo[.]" *People v Martinez*, 307 Mich App 641, 646; 861 NW2d 905 (2014) (quotation marks and citation omitted).

"This Court reviews for [an] abuse of discretion a trial court's ruling on a motion to withdraw a plea. A trial court abuses its discretion when its decision falls outside the range of reasonable and principled outcomes." *People v Brinkey*, 327 Mich App 94, 97; 932 NW2d 232 (2019) (quotation marks and citation omitted). "A trial court also necessarily abuses its discretion when it makes an error of law." *People v Al-Shara*, 311 Mich App 560, 566; 876 NW2d 826 (2015).

B. ANALYSIS

"While there is no absolute right to withdraw a guilty plea once the trial court has accepted it, a defendant may move to have his or her plea set aside on the basis of an error in the plea proceedings. A motion to withdraw a guilty plea after sentencing is governed by MCR 6.310(C)." *Brinkey*, 327 Mich App at 97-98 (alteration omitted; quotation marks and citations omitted). In relevant part, MCR 6.310(C)(3) states:

> If the trial court determines that there was an error in the plea proceeding that would entitle the defendant to have the plea set aside, the court must give the advice or make the inquiries necessary to rectify the error and then give the defendant the opportunity to elect to allow the plea and sentence to stand or to withdraw the plea. If the defendant elects to allow the plea and sentence to stand, the additional advice given and inquiries made become part of the plea proceeding for the purposes of further proceedings, including appeals.

"In other words, under MCR 6.310(C), a defendant seeking to withdraw his or her plea after sentencing must demonstrate a defect in the plea-taking process." *Brinkey*, 327 Mich App at 98 (quotation marks and citation omitted).

A defect exists under MCR 6.302 if the plea was not understanding, voluntary, and accurate, *People v Pointer-Bey*, 321 Mich App 609, 616; 909 NW2d 523 (2017), and "a plea that is not voluntary and understanding violates the state and federal Due Process Clauses," *Brinkey*, 327 Mich App at 99 (alteration omitted; quotation marks and citation omitted). Importantly,

> [t]o ensure that a guilty plea is accurate, the trial court must establish a factual basis for the plea. In order for a plea to be voluntary and understanding, the defendant must be fully aware of the direct consequences of the plea. The penalty to be imposed is the most obvious direct consequence of a conviction. Therefore, MCR 6.302(B)(2) requires the trial court to advise a defendant, prior to the defendant's entering a plea, of the maximum possible sentence for the offense and any mandatory minimum sentence required by law." [*Brinkey*, 327 Mich App at 98-99 (quotation marks, citation, and alteration omitted).]

"When . . . a plea is offered pursuant to a bargain with the prosecutor, voluntariness depends upon the defendant's knowledge of the actual value of the bargain." *People v Stovall*, 334 Mich App 553, 562; 965 NW2d 264 (2020), lv granted ___ Mich ___; 957 NW2d 827 (2021) (quotation marks and citation omitted). "A criminal defendant may be entitled to withdraw his or her guilty plea if the bargain on which the guilty plea was based was illusory, i.e., the defendant received no benefit from the agreement." *Pointer-Bey*, 321 Mich App at 621. "Similarly, an illusory plea bargain is one in which the defendant is led to believe that the plea bargain has one value when, in fact, it has another lesser value." *Stovall*, 334 Mich App at 562 (quotation marks and citation omitted).

Defendant argues that she received no benefit from pleading guilty to CSC-I, conspiracy to commit CSC-I, and conspiracy to commit kidnapping because the trial court was unable to sentence her to consecutive terms of imprisonment on these charges.

"In Michigan, concurrent sentencing is the norm, and a consecutive sentence may be imposed only if specifically authorized by statute." *People v Ryan*, 295 Mich App 388, 401; 819 NW2d 55 (2012) (quotation marks and citation omitted). MCL 750.520b(3) "authorizes a court to impose a CSC-1 sentence that runs consecutively to a sentence imposed for another criminal offense arising from the same transaction[.]" *Id*. This requires the crimes to grow "out of a continuous time sequence," *id*. at 402 (quotation marks and citation omitted), without a "disruption in time or in the flow of events," *id*. at 404. Additionally, "[s]omething that arises out of, or springs from or results from something else, has a connective relationship, a cause and effect relationship, of more than an incidental sort with the event out of which it has arisen." *Id*. at 403 (alteration omitted; quotation marks and citation omitted).

The evidence does not support that the sexual penetration of GS in relation to Case No. 18-112373-FC and the crimes that occurred in Case No. 18-112374-FC "grew out of a continuous time sequence[.]" See *id*. at 402 (quotation marks and citation omitted). Indeed, defendant conspired to commit CSC-I and kidnapping with respect to a yet to be identified victim in the summer of 2017 and committed CSC-I in relation to GS in October 2017. Moreover, the conspiracy offense was complete after the unlawful agreement was struck between defendant, Bailey, and the three other individuals. See *People v Seewald*, 499 Mich 111, 117; 879 NW2d 237 (2016) (holding that "[t]he gist of conspiracy lies in the illegal agreement; once the agreement is formed, the crime is complete") (quotation marks and citations omitted). The trial court therefore could not rely on MCL 750.520b(3) to impose consecutive sentences in relation to the CSC-I and conspiracy convictions.

The trial court also could not have relied on MCL 750.520b(3) to impose consecutive sentences for the conspiracy to commit CSC-I and the conspiracy to commit kidnapping convictions. Specifically, MCL 750.520b(3) provides:

> The court may order a term of imprisonment imposed under *this section* to be served consecutively to any term of imprisonment imposed for any other criminal offense arising from the same transaction. [Emphasis added.]

While defendant was subject to a mandatory 25-year term of imprisonment as a result of her conviction for conspiracy to commit CSC-I, MCL 750.520b(2)(b) and MCL 750.157a(a), the

Legislature's use of the phrase "this section" in MCL 750.520b(3) clearly refers to CSC-I convictions under MCL 750.520b(1)—as opposed to conspiracy to commit CSC-I convictions, see e.g., *Pointer-Bey*, 321 Mich App at 619. Indeed, MCL 750.520b gives no indication that conspiracy to commit CSC-I convictions should be deemed convictions under "this section," and this Court cannot add such a provision to the statute. See *id*. The plain language of the statute unambiguously requires a defendant to have been convicted of CSC-I under MCL 750.520b(1) before the defendant can be subjected to consecutive sentencing under MCL 750.520b(3). Thus, the trial court could not have relied on MCL 750.520b(3) to impose consecutive sentences for the conspiracy crimes. Additionally, as noted by defendant, neither MCL 750.157a nor MCL 750.349 support consecutive sentencing.

Nonetheless, defendant's pleas were not illusory. Defendant obtained a clear benefit from pleading guilty to CSC-I and the conspiracy crimes because multiple felony charges were dismissed in exchange for her pleas. This was not a minor benefit. Indeed, had defendant been convicted of conspiracy to commit first-degree murder, the trial court would have been required to sentence her to life imprisonment without the possibility of parole. MCL 750.316(1); MCL 750.157a(a). Thus, defendant received a significant benefit from the dismissal of the conspiracy to commit first-degree murder charge alone. See e.g., *Stovall*, 334 Mich App at 563.

Furthermore, the trial court could have imposed consecutive sentences if defendant had been convicted of CSC-I, producing child sexually abusive activity or material, and using a computer to commit a crime in relation to Case No. 18-112373-FC. Record evidence supports that defendant admitted to law enforcement in July 2018 that she had sexually assaulted an infant. Law enforcement later identified the infant, and law enforcement located at least one video on defendant's cell phone to support that defendant had sexually penetrated GS's vagina with her finger. The trial court concluded that defendant's admissions to law enforcement were admissible, and this Court denied defendant's application for leave to appeal from that decision. *People v LaPoint*, unpublished order of the Court of Appeals, entered July 17, 2019 (Docket No. 348392). Moreover, if the Branch County Prosecutor had sought to introduce other evidence of defendant's sexual abuse of GS, i.e., touching her "anywhere [she] could" and performing oral sex on GS, the evidence likely would have been admitted under MCL 768.27a.

Given this evidence, defendant would have likely been convicted of CSC-I, producing child sexually abusive activity or material, and using a computer to commit a crime if she had gone to trial. Because these crimes "sprang one from the other and had a connective relationship that was more than incidental," see *Ryan*, 295 Mich App at 403, the trial court would have had discretion to sentence defendant to consecutive sentences because these crimes arose from the same transaction. Instead of proceeding to trial, the Branch County Prosecutor's Office agreed that, in exchange for defendant pleading guilty to CSC-I in Case No. 18-112373-FC, the remainder of the charges in relation to that case would be dismissed. Consequently, defendant received a benefit.[1]

[1] To the extent that defendant challenges the amount of benefit received, this Court has explicitly stated that it will not weigh whether a plea agreement provides "enough" of a benefit to a defendant. See *People v Harris*, 224 Mich App 130, 134 n 3; 568 NW2d 149 (1997).

Additionally, had defendant not pleaded guilty to CSC-I and accepted responsibility, but later was found guilty of CSC-I at trial, defendant would have run the very real risk that the trial court would have sentenced her to more than the minimum 25 years' imprisonment required by statute. Factors that a trial court may consider when departing from the applicable guidelines range include the following:

> (1) the seriousness of the offense; (2) factors that were inadequately considered by the guidelines; and (3) factors not considered by the guidelines, such as the relationship between the victim and the aggressor, the defendant's misconduct while in custody, the defendant's expressions of remorse, and the defendant's potential for rehabilitation. [*People v Lampe*, 327 Mich App 104, 126; 933 NW2d 314 (2019) (quotation marks and citation omitted).]

Specifically, there was ample evidence beyond defendant's factual basis at the plea hearing that could have been introduced at trial and taken into consideration by the trial court when sentencing defendant. This evidence includes the statements made by defendant during her interview with law enforcement that support that she not only digitally penetrated GS, but that defendant also took photographs of GS's vaginal area and sent them to Bailey, that defendant touched GS "everywhere [she] could," and that defendant performed oral sex on GS. Defendant also admitted that she was sexually attracted to "babies" at the time and that she transported GS to the home that she shared with Bailey, who defendant knew had sexual desires for young children. As a result of defendant making GS available to Bailey, he was able to engage in multiple sexual acts on GS. This included Bailey touching GS "wherever [he] could," putting his penis in GS's mouth, ejaculating on GS, and performing oral sex on GS. Additionally, GS's four-year-old brother was present when at least some of these acts occurred, and defendant admitted to law enforcement that she and Bailey had discussed touching GS's brother. Defendant's extensive victimization of a very young GS and obvious danger to young children could have been used by the trial court to justify a minimum sentence that exceeded 25 years.

Additionally, during defendant's interview with members of law enforcement, she did not appear to express remorse for the crimes that were committed with respect to GS, and defendant failed to express remorse or take accountability during the plea hearings and during her interview with a probation officer in preparation for sentencing. Although defendant expressed some remorse during the sentencing hearings, it was minimal and occurred in the moments before she was sentenced. Defendant's lack of remorse and the low probability that defendant will be rehabilitated also could have been considered by the trial court.

In sum, the trial court could have sentenced defendant to more than a minimum term of 25 years' imprisonment and could have imposed consecutive sentences had defendant been convicted of CSC-I, producing child sexually abusive activity or material, and using a computer to commit a crime. Defendant "receive[d] many benefits for the plea[s]," and we conclude that the bargains were not illusory and that defendant's right to due process was not violated. See

Pointer-Bey, 321 Mich App at 624 (quotation marks and citation omitted). The trial court therefore did not abuse its discretion by denying defendant's motions to withdraw her guilty pleas.[2]

Affirmed.

/s/ Michael F. Gadola
/s/ Brock A. Swartzle
/s/ Thomas C. Cameron

[2] We acknowledge that defendant cites *People v Lawson*, 75 Mich App 726; 255 NW2d 748 (1977) and *People v Falkenberg*, 124 Mich App 173; 333 NW2d 616 (1983), to support that the trial court abused its discretion by denying her motions to withdraw her pleas. However, because these cases were decided before November 1, 1990, they are not binding on this Court. See MCR 7.215(J)(1).