

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

MATTHEW WRIGHT,

Defendant-Appellant.

UNPUBLISHED

February 1, 2005

No. 251054

Wayne Circuit Court

LC No. 02-010037-01

Before: Zahra, P.J., and Neff and Cooper, JJ.

MEMORANDUM.

Defendant Matthew Wright appeals by delayed leave granted from plea-based convictions of two counts of first-degree criminal sexual conduct (CSC), MCL 750.520b(1)(a), and three counts of second-degree CSC, MCL 750.520c(1)(a), for which he was sentenced to concurrent terms of ten to fifteen years in prison. As the trial court imposed a minimum sentence in excess of the preliminary evaluation and thereafter denied defendant's request to withdraw his plea, we reverse and remand. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant contends, and the prosecution concedes, that the trial court erred in denying his motion to withdraw his plea or for resentencing because the minimum sentence exceeded the preliminary evaluation pursuant to which defendant tendered his plea. We agree.

At the request of a party, the court may state on the record the length of a sentence that appears to be appropriate based on the information then before it. *People v Cobbs*, 443 Mich 276, 283; 505 NW2d 208 (1993). If the court later determines that the sentence is inappropriate, the defendant has an absolute right to withdraw his plea. *People v Everard*, 225 Mich App 455, 458; 571 NW2d 536 (1997). Whether a defendant's sentence exceeded the preliminary evaluation is a question of fact that is reviewed for clear error. *Id.* A postjudgment motion to withdraw a plea is reviewed for an abuse of discretion resulting in a miscarriage of justice. *People v Davidovich*, 238 Mich App 422, 425; 606 NW2d 387 (1999).

A trial court only has authority to fix the minimum term of an indefinite sentence; it is required to impose the maximum term established by the Legislature. MCL 769.8(1). The maximum sentence for first-degree CSC is life or any term of years. MCL 750.520b(2). The maximum sentence for second-degree CSC is fifteen years. MCL 750.520c(2). The minimum sentence is to be determined by reference to the sentencing guidelines. MCL 769.34(2).

Defendant offered to plead no contest for a sentence within the statutory guidelines. The parties advised the court that the guidelines set a minimum sentence range of 81 to 135 months. The court gave a sentence evaluation of 81 to 240 months on the first-degree CSC charges and 81 to 180 months on the second-degree CSC charges. While the court apparently intended those to be the minimum sentence ranges, it did not have authority to set a minimum sentence range different from those established by the Legislature. Therefore, the parties properly understood the court's evaluation as a minimum sentence of eighty-one months with a maximum sentence of twenty years on the first-degree CSC charges and a maximum sentence of fifteen years on the second-degree CSC charges. Because the defendant's minimum sentence of ten years exceeded the evaluation, defendant is entitled to withdraw his plea or to be resentenced in accordance with the sentence evaluation. Accordingly, the trial court abused its discretion in failing to grant defendant any relief.

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

/s/ Brian K. Zahra
/s/ Janet T. Neff
/s/ Jessica R. Cooper