

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

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PEOPLE OF THE STATE OF MICHIGAN,  
  
Plaintiff-Appellee,

UNPUBLISHED  
June 24, 2014

v

JOSEPH LATEEF,  
  
Defendant-Appellant.

No. 315157  
Wayne Circuit Court  
LC Nos. 12-000312-FC  
12-000313-FC  
12-000314-FC  
12-000315-FC  
12-000318-FC  
12-002132-FH

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Before: SAWYER, P.J., and METER and FORT HOOD, JJ.

PER CURIAM.

Defendant appeals by leave granted<sup>1</sup> the order denying his motion for resentencing, for enforcement of the plea agreement, or to withdraw his plea. We reverse and remand for proceedings consistent with this opinion.

Defendant's convictions arise from five armed robberies of parking lot attendants in a two-week span in December 2011, with a firearm or sawed-off shotgun. One of the attendants advised the police that defendant was driving a dark colored Neon with a white driver's door. The next day, the police observed a purple Dodge Neon with a white door. A police chase caused defendant to crash the car, a stolen vehicle, and a foot chase ensued. Defendant was apprehended carrying a black bag which contained a sawed-off shotgun with two live shells. In January 2012, defendant was awaiting trial. He was present in the garage to be taken to the recreation room when he stepped out of line, hid in the garage, and fled when the door opened, but was apprehended. Pursuant to a settlement agreement, defendant agreed to plead guilty to the five armed robberies and felony-firearm offenses with a sentence agreement of 14 to 35 years

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<sup>1</sup> *People v Lateef*, unpublished order of the Court of Appeals, entered October 24, 2013 (Docket No. 315157).

for the armed robbery convictions consecutive to the two-year sentence for felony-firearm.<sup>2</sup> However, all armed robbery sentences and all felony-firearm sentences were to be served concurrently. Thus, it was anticipated that defendant would serve a minimum of sixteen years imprisonment, first serving the two-year concurrent sentences for felony-firearm followed by the minimum fourteen-year sentences for armed robbery.

Despite the extensive discussion and agreement regarding the other offenses, the escape charge was given scant attention. On the record delineating the plea agreement, defense counsel stated that with regard to the escape charge, “there is no sentence agreement on that case, basically, it would be a guideline sentence . . . and we ask that . . . case run concurrent with the fourteen plus two on the five armed robberies.” At sentencing with regard to the conviction for escape awaiting trial, defendant was sentenced as a fourth habitual offender, MCL 769.12, to three to twenty years imprisonment “[t]hat sentence . . . will run concurrent with the sentences in all the other cases.” However, the Michigan Department of Corrections notified the trial court that the sentence for escape must be served consecutive to the other sentences, MCL 750.197(2). Consequently, the trial court amended the judgment of sentence to reflect the escape sentence was consecutive to the sentences in the other five cases.

Defendant filed a motion for resentencing or for specific performance of the sentencing agreement. Further, at the hearing on the motion, the defense asked that the court allow defendant to withdraw his plea. The prosecutor opposed the motion, asserting that the escape conviction was never part of a plea agreement and a criminal defendant need not be advised that a sentence for escape must be served consecutively. An evidentiary hearing was held. Although defense counsel did not appear because of a scheduling conflict, he submitted an affidavit reflecting his understanding that defendant’s sentence for escape would be served concurrent to his other sentences. The trial court agreed with the case law submitted by the prosecutor and denied defendant’s motion. From this ruling, we granted defendant’s application for leave to appeal.

A trial court’s ruling regarding a motion to withdraw a plea is reviewed for an abuse of discretion. *People v Brown*, 492 Mich 684, 688; 822 NW2d 208 (2012). “A defendant pleading guilty must enter an understanding, voluntary, and accurate plea.” *Id.* at 688-689 citing MCR 6.302(A). To be understanding, a defendant must be apprised of the maximum possible prison sentence for the offense and any mandatory minimum sentence applied by law. *Id.* at 689. When a sentence is enhanced pursuant to the habitual offender statutes, before pleading guilty, a defendant “must be notified of the maximum possible prison sentence with habitual-offender enhancement because the enhanced maximum becomes the ‘maximum possible sentence’ for the principal offense.” *Id.* at 693-694.

In the present case, defendant does not challenge his sentence in the context of sentencing enhancement. Rather, the issue is whether defendant should have been allowed to withdraw his

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<sup>2</sup> Defendant was also charged with felon in possession of a firearm, fleeing and eluding, receiving a stolen motor vehicle, possession of a short barrel shotgun. The sentences for these offenses did not impact the minimum term of imprisonment defendant would serve.

plea after sentencing when he was misinformed that his 3-year minimum sentence for escape would run concurrent to his other sentences. Thus we must consider whether the trial court was required to inform defendant that his sentence for escape would run consecutive to his other sentences. Whether the terms of the plea agreement were fulfilled relates to the voluntariness of defendant's plea under MCR 6.302(C)(1). Whether the trial court was required to inform defendant that his sentence for escape would run consecutive to his other sentences relates to whether defendant made "an understanding plea" under MCR 6.302(B). See *People v Mitchell*, 102 Mich App 554; 302 NW2d 230 (1980), rev'd in part on other grounds 412 Mich 853 (1981).

In *Mitchell*, the defendant was charged with first degree murder and felony-firearm. *Mitchell*, 102 Mich App at 555. The trial court accepted the defendant's plea of guilty to second degree murder. *Id.* The trial court informed defendant that a mandatory sentence of "up to two years" would be imposed for the felony-firearm charge, and specifically informed defendant that "[t]his charge would run concurrently, that is together, with any sentence imposed on any other charges." *Id.* 555-556 (emphasis omitted). On appeal, this Court held that the trial court had misinformed the defendant about the consequences of pleading guilty in two ways—(1) the felony-firearm statute required a mandatory minimum sentence of two years rather than a sentence of up to two years, and (2) the felony-firearm statute required the sentence to run consecutive to the sentence imposed for the underlying felony. *Id.* at 556. The Court noted that there was "no court rule which explicitly requires the court to inform the defendant at a guilty-plea proceeding that the sentence will be consecutive." *Id.* The *Mitchell* Court also discussed two of this Court's prior cases holding that a trial court did not have a duty to inform a criminal defendant that the court had the discretion to impose a consecutive sentence. However, the *Mitchell* Court held that the prior cases were distinguishable because (1) the trial court in those cases had "remained silent . . . rather than misinforming the defendants," and (2) "the charges in those cases did not require consecutive or specific mandatory sentences as does the felony-firearm statute." *Id.* at 556-557. The *Mitchell* Court stated, "The purpose of the mandatory sentencing rule is to apprise the defendant of the minimum time he will serve in prison so that his plea of guilty is given with full knowledge of the consequences." *Id.* at 557. The Court then held, "[W]here consecutive and/or mandatory sentencing is ordered by statute, the defendant must be informed of that fact so that he has full knowledge of the true minimum time he will serve by pleading guilty." *Id.* Accordingly, the *Mitchell* Court remanded the case and ordered that the trial court accurately inform the defendant of the consequences of his plea and allow him an opportunity to withdraw the plea. *Id.*

*Mitchell* is consistent with our Supreme Court's decision in *Brown*, 492 Mich at 695, which held that under MCR 6.302(B) "a failure to advise a defendant of the maximum possible prison sentence before taking a guilty plea constitutes an error requiring reversal." Similarly to the present case, the failure to advise defendant of the absolute minimum sentence in light of mandatory consecutive sentences requirements was erroneous. Accordingly, we remand to the trial court with instructions to give defendant accurate information about the consequence of his

plea. Defendant will then have the opportunity to affirm the plea or withdraw it. *Brown*, 492 Mich at 695-696.<sup>3</sup>

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

/s/ David H. Sawyer  
/s/ Patrick M. Meter  
/s/ Karen M. Fort Hood

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<sup>3</sup> The cases cited by the prosecution, *People v Brooks*, 122 Mich App 39; 329 NW2d 524 (1982); *People v Meeks*, 116 Mich App 655; 323 NW2d 332 (1982); and *People v Hollie*, 112 Mich App 370; 315 NW2d 549 (1981), are distinguishable. In those cases, the sentences for which consecutive sentencing applied were previously imposed sentences, not sentences applied at the same time as the escape sentence. *Brooks*, 122 Mich App at 42; *Meeks*, 116 Mich App at 657-658; *Hollie*, 112 Mich App at 371-372.