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STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellant, V MARK REED, Defendant-Appellee.	UNPUBLISHED September 09, 2026 2:20 PM No. 379658 Wayne Circuit Court LC No. 24-004602-01-FJ

Before: M. J. KELLY, P.J., and O'BRIEN and LIEVENSE, JJ.

PER CURIAM.

The prosecution appeals by leave granted[1] the trial court's order allowing defendant, Mark Reed, resentencing on his conviction of first-degree criminal sexual conduct (CSC-I), MCL 750.520b(1)(f). For the reasons stated in this opinion, we reverse.

I. BASIC FACTS

On August 8, 2013, Reed sexually assaulted KS by forcing her to engage in penetrative intercourse with him. KS received a rape-kit examination, which yielded DNA evidence that—years later—implicated Reed as the perpetrator. In the meantime, Reed kidnapped and sexually assaulted a different woman, was apprehended, and convicted pursuant to a guilty plea. In that case, he was sentenced to 7 to 15 years of incarceration. The charges related to KS's sexual assault were brought when Reed was about to be released on parole in the other case.

After unsuccessfully moving to dismiss the charges on grounds of prearrest delay, Reed accepted a plea offer in which he pleaded guilty to CSC-I in exchange for dismissal of a kidnapping

[1] *People v Reed*, unpublished order of the Court of Appeals, entered March 10, 2026 (Docket No. 379658).

charge, a sentencing agreement of 3 to 15 years imprisonment,[2] and the award of any jail credit that the trial court had discretion to award under MCL 769.11b.

At his sentencing hearing, the trial court sentenced Reed in accordance with the plea agreement to 3 to 15 years of incarceration. The court further determined that Reed was entitled to 172 days jail credit (representing the time between his arraignment in this case until his sentence date). However, the court found that it lacked discretion under MCL 769.11b to award any additional jail credit. Subsequently, Reed moved for resentencing, arguing that his sentence was incorrect because additional jail credit should have been awarded under MCL 769.11b for the entire time he was incarcerated on the second case. He asked that he either be awarded the additional jail credit or that his conviction be set aside. A successor judge found that Reed's constitutional rights had been violated due to prearrest delay, that dismissal of the charges was not an appropriate remedy, but that resentencing was warranted. Accordingly, the court granted Reed's motion for resentencing. This appeal by leave granted follows.

II. SENTENCE

A. STANDARD OF REVIEW

The prosecutor argues that the trial court erred by allowing Reed to appeal his unconditional guilty plea without following the requirements of MCR 6.310(C) and by granting Reed relief on a claim that was waived by Reed's unconditional guilty plea. We review de novo questions related to the rights a defendant waives when he or she entered an unconditional plea. *People v Cook*, 323 Mich App 435, 442; 918 NW2d 536 (2018). Likewise, we review de novo the trial court's "interpretations and application of statutes and court rules." *People v Lee*, 489 Mich 289, 295; 803 NW2d 165 (2011). Finally, "[t]he question whether [a] defendant is entitled to sentence credit pursuant to MCL 769.11b for time served in jail before sentencing is an issue of law that we review de novo." *People v Waclawski*, 286 Mich App 634, 688; 780 NW2d 321 (2009).

B. ANALYSIS

"An unconditional guilty plea that is knowing and intelligent waives claims of error on appeal, even claims of constitutional dimension." *People v Likine*, 492 Mich 367, 409; 823 NW2d 50 (2012). Moreover, "a defendant who pleads guilty and is sentenced in accordance with a plea bargain and sentencing agreement waives the right to challenge the sentence unless there is also an attempt to *withdraw* the plea for a sound legal reason." *People v Blount*, 197 Mich App 174, 175-176; 494 NW2d 829 (1992) (emphasis added). Here, Reed did not move to withdraw his plea. However, based upon the court's finding that Reed's plea was "not knowing and voluntary," the court should have followed the procedure set forth in MCR 6.310(C)(3), which provides:

[2] Although Reed's minimum sentencing guidelines range was 9 to 15 years, the prosecutor offered the significantly lower sentence in recognition of the fact that if he had been charged during his incarceration for the second case he would have been serving time concurrently for both cases.

> 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.

By ignoring MCR 6.310(C)(3) and instead granting resentencing on the basis of a waived constitutional issue,[3] we conclude that the trial court erred.

Moreover, the trial court's decision to grant resentencing violated the principle that a "trial court cannot assume the prosecutor's charging authority by accepting a plea bargain but rejecting its sentencing agreement" or selectively choosing which portions of the plea agreement to enforce. See *People v Smith*, 502 Mich 624, 646-647; 918 NW2d 718 (2018), discussing *People v Siebert*, 450 Mich 500; 537 NW2d 891 (1995). When the parties entered into the plea agreement, the original judge had already rejected the same basic arguments upon which the successor judge granted resentencing here—i.e., Reed's arguments regarding the prejudice that he had allegedly suffered as a result of the prosecution's delay in pursuing the charges in this case. Nevertheless, in offering a sentence that was 6 years below the minimum sentencing guidelines range, the prosecution indicated that it was acting in a good-faith effort to remediate any such prejudice to Reed. Consequently, the successor judge's decision to grant resentencing on that same basis fundamentally altered the parties' bargain, improperly "impos[ing] a different plea bargain on the prosecutor than he or she agreed to." See *Smith*, 502 Mich at 647. Before doing so, the trial court should also have afforded "the prosecutor an opportunity to withdraw from the agreement." *Id*.

Reed contends that, under MCR 2.612, errors that arise from oversight or omission may be corrected. He maintains that he was promised any discretionary jail credit available under MCL 769.11b. He argues that the original judge erred by determining that she lacked discretion to award any jail credit that was not required by MCL 769.11b.

MCL 769.11b provides:

> Whenever any person is hereafter convicted of any crime within this state and has served any time in jail prior to sentencing because of being denied or unable to furnish bond for the offense of which he is convicted, the trial court in imposing sentence shall specifically grant credit against the sentence for such time served in jail prior to sentencing.

Although the parties direct this Court to diverging interpretations of a number of cases, the issue was recently resolved in *People v Bell*, ___ Mich App ___, ___; ___ NW3d ___ (2026) (Docket No. 374765). After considering the pertinent caselaw, the *Bell* Court concluded that, when jail

[3] We note an additional anomaly with the decision to resentence Reed in that the original trial judge resolved the constitutional question in favor of the prosecution before Reed entered his guilty plea.

credit is not mandated under MCL 769.11b, the trial court does not have discretion to award any additional jail credit. *Id*. at ___; slip op at 8-9. As such, there is no error in the judgment of sentence relating to the calculation of jail credit.

Reversed.

/s/ Michael J. Kelly
/s/ Colleen A. O'Brien
/s/ Andrew J. Lievense