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STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellant,	UNPUBLISHED November 05, 2026 2:14 PM
v	No. 375244 Clinton Circuit Court
JORDAN SCOTT COVERDALE, Defendant-Appellee.	LC Nos. 2024-011675-FH; 2024-011676-FH

Before: ACKERMAN, P.J., and BORRELLO and KOROBKIN, JJ.

PER CURIAM.

The prosecution appeals by leave granted[1] the judgment of sentence entered in lower court no. 2024-011675-FH after defendant pleaded guilty to felony third-offense domestic violence, MCL 750.81(5). When it was discovered before sentencing that one of the prior convictions listed in the third-offense notice did not exist, the trial court ruled that the notice was defective under MCL 750.81b, even though it agreed that defendant had another qualifying prior conviction. Over the prosecution's objection, the trial court then sentenced defendant for second-offense domestic violence, a misdemeanor, while leaving in place the concessions the prosecution had made in exchange for the felony plea.

We need not decide whether MCL 750.81b applies to enhancements under MCL 750.81(5). Even if MCL 750.81b applies and the notice was defective, the trial court could not sentence defendant for a lesser offense while holding the prosecution to its concessions under the plea agreement; it was instead required to permit the prosecution to withdraw from the agreement. We therefore vacate the judgment of sentence in lower court no. 2024-011675-FH and remand for further proceedings.

[1] *People v Coverdale*, unpublished order of the Court of Appeals, entered July 9, 2025 (Docket No. 375244).

I. BACKGROUND

This case arises from defendant's assault of NL, with whom he had a dating relationship, at their residence on August 17 and 18, 2024, and from his struggle with police officers who later arrested him for that assault.

In lower court no. 2024-011675-FH, the prosecutor charged defendant with two counts of domestic violence, MCL 750.81(2). As to each count, the information included a third-offense notice alleging that defendant had previously been convicted of domestic assault "by violating MCL 750.81a(2) on or about September 14, 2017, and by violating MCL 750.81(2) on or about February 3, 2022, and therefore, upon conviction, will be subject to an enhanced sentence under MCL 750.81(5)." The information also included a fourth-offense habitual-offender notice, MCL 769.12. In lower court no. 2024-011676-FH, the prosecution charged defendant with assaulting, resisting, or obstructing a police officer causing bodily injury requiring medical attention, MCL 750.81d(2), and assaulting, resisting, or obstructing a police officer, MCL 750.81d(1), again with a fourth-offense habitual-offender notice.

The parties entered into a plea agreement, which the prosecution placed on the record at the plea hearing as follows:

> In file number [2024-011675-FH], if defendant enters a plea to count one, domestic violence with a third[-]offense notice, the [P]eople will agree to dismiss count two and the habitual offender sentencing enhancement in its totality and then in regards to file number [2024-011676-FH], if defendant enters a plea of guilt to amended count one of attempted assaulting, resisting, or obstructing a police officer, a misdemeanor, the original count one and count two and the habitual offender fourth[-]offense sentencing enhancement will be dismissed.

Defense counsel agreed that the prosecution's statement of the agreement was accurate, adding only that the sentences would be served concurrently. The prosecution then read the domestic violence charge, including the third-offense notice, and advised that the offense was "a felony, punishable by up to five years and/or $5,000." Defendant stated that he understood the charges and the maximum possible penalties, and he pleaded guilty. In eliciting the factual basis for the plea, defense counsel questioned defendant about the prior domestic-violence convictions. Defendant admitted his 2017 conviction for aggravated domestic violence, MCL 750.81a(2), in the 65-A District Court. Asked whether he had been convicted of second-offense domestic violence in Huron County on February 3, 2022, defendant responded, "I'm not for certain, but yes." Defense counsel then clarified that defendant was "not challenging" that prior conviction but requested that the prosecution produce the associated judgment of sentence when the parties returned for sentencing. Defendant also pleaded guilty to one count of attempted assaulting, resisting, or obstructing a police officer. The trial court accepted the pleas, finding them knowingly, understandingly, and voluntarily made.

On January 27, 2025, the date originally scheduled for sentencing, the prosecution learned from Huron County that defendant had not been convicted of domestic violence in the 2022 case. Instead, the domestic-violence charge in that case had been dismissed when defendant pleaded guilty to possession of methamphetamine, and the Law Enforcement Information Network entry

reflecting a 2022 domestic-violence conviction was erroneous. The prosecution disclosed the error on the record and requested time to file a motion to set aside the plea, explaining that the plea agreement had been premised on defendant's conviction of felony third-offense domestic violence under MCL 750.81(5), and that, with the Huron County entry removed, the third-offense notice no longer listed the two valid prior convictions necessary to support that conviction. Defense counsel opposed any withdrawal of the plea, maintaining that the parties had "bargained for an agreement" and that the prosecution had "drug [its] feet" by waiting until the day of sentencing to confirm the prior conviction. The trial court granted the prosecution's request for an adjournment so it could file a motion to set aside the plea, and the court established a briefing schedule.

The prosecution did not file the motion. Instead, on February 19, 2025, it filed a sentencing memorandum identifying a different prior conviction to substitute for the Huron County conviction: a March 12, 2019 conviction in the 65-A District Court for assault and battery, MCL 750.81(1), of KS, with whom defendant resided and shared a child. In light of that conviction, the prosecution asked that defendant be sentenced for third-offense domestic violence in accordance with the plea agreement. Defendant did not dispute the existence of the 2019 conviction or the facts establishing his relationship with KS. At a hearing on February 24, 2025, defendant argued instead that a conviction under MCL 750.81(1) could not serve as a predicate conviction under MCL 750.81(5), and that the prosecution had not given timely notice of its intent to rely on the 2019 conviction. At a further hearing on March 10, 2025, defendant contended that the notice was defective because MCL 750.81b requires the prosecution to list in the charging document the prior convictions on which it intends to rely.

The trial court again adjourned sentencing to permit the parties to brief that issue. In its memorandum, the prosecution argued that by its express terms, the notice requirements in MCL 750.81b apply only to enhancements under MCL 750.81(3) and (4), not to enhancements under MCL 750.81(5). For his part, defendant averred that the references in MCL 750.81b to MCL 750.81(3) and (4) should be understood to encompass the current MCL 750.81(4) and (5).

When the parties returned for sentencing on March 24, 2025, the prosecution again asked the trial court to sentence defendant in accordance with the plea agreement. The trial court agreed with the prosecution that the 2019 assault and battery conviction was a qualifying conviction for purposes of MCL 750.81(5) but found that "the notice was defective pursuant to the statute." In so ruling, the trial court adopted defense counsel's position concerning the interpretation of MCL 750.81b. That left the 2017 conviction as the only prior conviction properly listed in the notice, and the trial court therefore treated the instant domestic-violence conviction as one for second-offense domestic violence, a one-year misdemeanor. The trial court then sentenced defendant to concurrent terms of 270 days in jail and two years' probation in each file. The prosecution now appeals.

II. DISCUSSION

The prosecution asserts that the trial court erred by sentencing defendant for second-offense domestic violence, rather than for the third-offense domestic violence charge to which he pleaded guilty. According to the prosecution, MCL 750.81b does not apply to an enhancement under MCL 750.81(5), any error in the third-offense notice could be cured by amendment, and the

trial court infringed on the prosecution's charging authority by sentencing defendant for a misdemeanor while holding the prosecution to its concessions under the plea agreement.

We review de novo questions of statutory interpretation and constitutional questions, including those concerning the separation of powers. *People v Fredell*, 516 Mich 1, 7; 33 NW3d 320 (2024). A trial court's decision whether to permit the amendment of an information or a notice of intent to seek an enhanced sentence is reviewed for an abuse of discretion. *People v McGee*, 258 Mich App 683, 686-687; 672 NW2d 191 (2003); see also MCR 6.112(H). So too is a trial court's decision whether to give effect to the terms of an accepted plea agreement. See *People v Martinez*, 307 Mich App 641, 646-650; 861 NW2d 905 (2014). "An abuse of discretion occurs when the trial court's decision is outside the range of principled outcomes." *Id*. at 646 (citation omitted). A trial court necessarily abuses its discretion when it makes an error of law. *People v Everett*, 318 Mich App 511, 516; 899 NW2d 94 (2017).

A. MCL 750.81 AND MCL 750.81b

MCL 750.81 was enacted as part of the Michigan Penal Code, 1931 PA 328. In 1994, the Legislature amended MCL 750.81 to establish a graduated scheme of penalties for domestic assault. Under that scheme, an individual who assaulted or assaulted and battered a spouse, former spouse, or other person with whom he or she had a specified domestic relationship was guilty of a misdemeanor, former MCL 750.81(2), and enhanced penalties applied to an individual who had one previous qualifying conviction, former MCL 750.81(3), or two or more previous qualifying convictions, former MCL 750.81(4). See 1994 PA 64.

At the same time that the Legislature amended MCL 750.81, it enacted MCL 750.81b, 1994 PA 65, which sets forth procedures that apply "in any case in which the prosecuting attorney seeks an enhanced sentence under section 81(3) or (4) or 81a(3)." Under MCL 750.81b(a), "[t]he charging document or amended charging document shall include a notice provision that states that the prosecuting attorney intends to seek an enhanced sentence under section 81(3) or (4) or 81a(3) and lists the prior conviction or convictions that will be relied upon for that purpose." The statute further provides that prior convictions "shall be established at sentencing" by any relevant evidence, MCL 750.81b(b); that the defendant shall be given an opportunity to "deny, explain, or refute" that evidence, MCL 750.81b(c); and that a prior conviction may be considered if the court finds, by a preponderance of the evidence, both the conviction and the required relationship between the defendant and the prior victim, MCL 750.81b(d). Thus, as enacted, MCL 750.81b governed both the second-offense and third-offense domestic-violence enhancements.

In 2016, the Legislature amended MCL 750.81 to add a new subsection (3), which prohibits assaulting an individual known to be pregnant, and it renumbered the second-offense and third-offense enhancements as subsections (4) and (5), respectively. See 2016 PA 87. Under the current statute, domestic assault is a 93-day misdemeanor. MCL 750.81(2). An individual who commits an assault in violation of subsection (2) or (3) after one qualifying prior conviction is guilty of a one-year misdemeanor, MCL 750.81(4), and an individual who does so with "2 or more previous convictions for assaulting or assaulting and battering an individual described in" subsection (2) or (3) "is guilty of a felony punishable by imprisonment for not more than 5 years or a fine of not

more than $5,000.00, or both," MCL 750.81(5). Qualifying prior convictions include convictions under MCL 750.81 itself and under MCL 750.81a. MCL 750.81(5)(a) and (b).[2]

The Legislature did not amend MCL 750.81b to reflect the renumbering, and it has not done so since. As a result, MCL 750.81b continues to refer to MCL 750.81(3) and (4), which now prohibit assault of a pregnant individual and establish the second-offense enhancement, respectively, but it makes no reference to the third-offense enhancement in MCL 750.81(5).

The parties dispute the consequence of this legislative history. The prosecution argues that, as written, MCL 750.81b applies only when the prosecutor seeks an enhanced sentence "under section 81(3) or (4) or 81a(3)," and therefore does not apply to the third-offense enhancement now codified at MCL 750.81(5). Two panels of this Court have reached that conclusion in unpublished opinions. See *People v Proctor*, unpublished per curiam opinion of the Court of Appeals, issued June 24, 2021 (Docket No. 352279), pp 3-4; *People v Joseph*, unpublished per curiam opinion of the Court of Appeals, issued December 29, 2020 (Docket No. 349734), p 4 n 5. But defendant contends, and the trial court concluded, that the Legislature's failure to amend MCL 750.81b to conform to the 2016 amendment of MCL 750.81 was an oversight, and that the statute should therefore be read to refer to the provisions now codified at MCL 750.81(4) and (5). Defendant also argues that *People v Guyton*, 511 Mich 291; 999 NW2d 393 (2023), establishes that enhancement statutes should be interpreted as requiring notice.

We need not resolve this dispute. As explained below, even if MCL 750.81b applies to enhancements under MCL 750.81(5), the error in the third-offense notice was curable by amendment, and in any event, the trial court lacked authority to sentence defendant for second-offense domestic violence while holding the prosecution to its concessions under the plea agreement.

B. AMENDMENT OF THE INFORMATION

Regardless of whether MCL 750.81b applies, the error in the third-offense notice did not preclude the enhancement because it was curable by amendment. Under the court rules, "[t]he court before, during, or after trial may permit the prosecutor to amend the information or the notice of intent to seek enhanced sentence unless the proposed amendment would unfairly surprise or prejudice the defendant." MCR 6.112(H); see also MCL 767.76. Nor does MCL 750.81b, if it applies, require a different result. That statute expressly contemplates that the required notice may appear in an "amended charging document," MCL 750.81b(a), and unlike the habitual-offender statute, which requires the prosecutor to file a notice of intent to seek an enhanced sentence within 21 days after arraignment, MCL 769.13(1), MCL 750.81b imposes no deadline.

This Court's habitual-offender decisions are instructive. Notwithstanding the strict timing requirements that govern habitual-offender notices, this Court has upheld a late amendment that corrected an error in the specific prior convictions listed in the notice without elevating the level of the enhancement. See *People v Manning*, 163 Mich App 641; 415 NW2d 1 (1987), as explained

[2] Although the Legislature again amended MCL 750.81 in 2023, see 2023 PA 271, those amendments are immaterial to the issues presented in this appeal.

in *People v Ellis*, 224 Mich App 752, 757 n 2; 569 NW2d 917 (1997). As this Court has explained, "a recognized difference exists between an amendment of a notice to seek sentence enhancement that attempts to impose more severe adverse consequences to a defendant and one that does not." *People v Hornsby*, 251 Mich App 462, 472; 650 NW2d 700 (2002). Our caselaw "does not preclude the amendment of a timely sentence enhancement information to correct a technical defect where the amendment does not otherwise increase the potential sentence consequences." *Id*.

The substitution of the 2019 conviction for the erroneously listed 2022 entry is such an amendment. It did not alter the enhancement that the prosecution sought or the maximum sentence that defendant faced; from the outset, defendant was charged with, pleaded guilty to, and was advised of the consequences of a third-offense felony. The 2019 conviction was his own, and in that proceeding he acknowledged under oath that he lived with the victim. The prosecution disclosed the substitution and its documentary support more than one month before the trial court sentenced defendant, and although defendant had the opportunity to "deny, explain, or refute" that evidence, as MCL 750.81b(c) would require, he did not dispute its accuracy. The trial court, in turn, found that the 2019 conviction was a qualifying conviction, which is the finding that MCL 750.81b(d) would require. Under these circumstances, the amendment would not have unfairly surprised or prejudiced defendant.

Nothing in the court rules or in MCL 750.81b provides that an error in the identification of prior convictions permanently forecloses an enhancement that the prosecution has properly noticed and proved. The purpose of an enhancement notice is "to provide the accused with notice, at an early stage in the proceedings, of the potential consequences should the accused be convicted of the underlying offense." *People v Shelton*, 412 Mich 565, 569; 315 NW2d 537 (1982) (addressing habitual-offender notices). That purpose was fully served here: defendant knew from the outset that the prosecution sought a third-offense felony, and he had a full opportunity to contest the prior convictions on which the felony rested before sentence was imposed. The prosecution was therefore entitled to amend the notice to substitute the 2019 conviction, and the trial court erred by treating the defect in the notice as requiring it to sentence defendant for second-offense domestic violence.

C. THE PLEA AGREEMENT

In any event, even if MCL 750.81b applies and the notice was defective, the disposition the trial court adopted was beyond its authority. Having concluded that the third-offense enhancement was unavailable, the trial court could not sentence defendant for a lesser offense while holding the prosecution to the concessions made in exchange for defendant's plea to a greater offense. Instead, it was required to permit the prosecution to withdraw from the plea agreement.

The decision whether to charge a defendant, and with what, is an executive function entrusted to the prosecutor. *Genesee Prosecutor v Genesee Circuit Judge*, 391 Mich 115, 121; 215 NW2d 145 (1974) (*Genesee Prosecutor II*). "A circuit judge does not enjoy supervisory power over a prosecuting attorney." *Id*. Accordingly, "a trial judge does not have authority, over the objection of the prosecutor, to accept a plea of guilty to an offense not charged in the information." *Id*. at 118, citing *Genesee Prosecutor v Genesee Circuit Judge*, 386 Mich 672, 684-685; 194 NW2d 693 (1972) (*Genesee Prosecutor I*). In *Genesee Prosecutor II*, our Supreme Court applied that

rule to set aside a plea of guilty to manslaughter that the trial court had accepted over the prosecutor's objection on a charge of murder. *Genesee Prosecutor II*, 391 Mich at 118-123.

The same principle limits a trial court's authority to alter a plea agreement after accepting the plea. In *People v Siebert*, 450 Mich 500, 510-511; 537 NW2d 891 (1995), the Supreme Court held that the prosecution "has an equal, though different, constitutional interest at stake insofar as it is constitutionally entrusted with authority to charge defendants," and that a court therefore "may not keep the prosecutor's concession by accepting a guilty plea to reduced charges, and yet impose a lower sentence than the one for which the prosecutor and the defendant bargained." When a court concludes that it will not impose the bargained-for result, "it must alert the prosecutor . . . and allow the prosecutor to withdraw from the plea." *Id*. at 511. The Court reaffirmed that rule in *People v Smith*, 502 Mich 624, 646-647; 918 NW2d 718 (2018), explaining that when the trial court "rejects either the sentence or a plea term . . . while keeping the rest of the agreement, the trial court essentially imposes a different plea bargain on the prosecutor than he or she agreed to. In such circumstances, the trial court infringes on the prosecutor's charging discretion. This is impermissible."

The trial court's ruling here cannot be reconciled with these principles. From the prosecution's perspective, the essential term of the plea agreement was defendant's conviction of a felony punishable by up to five years' imprisonment. In exchange, the prosecution dismissed a second count of domestic violence, reduced a four-year felony to an attempt punishable as a misdemeanor, dismissed a two-year felony, and withdrew the fourth-offense habitual-offender notices in both files. Over the prosecution's objection, the trial court sentenced defendant for a misdemeanor in place of a bargained-for felony, while leaving each of those concessions in effect.

Defendant maintains that the trial court was entitled to substitute a different plea agreement over the prosecutor's objection because of two asserted deficiencies in the plea proceeding: that his plea rested on an "inaccurate understanding" of his potential sentence, given that one of the prior convictions listed in the third-offense notice did not exist, and that the prosecution never amended the third-offense notice to list the 2019 conviction on which it relied in place of the erroneously listed Huron County conviction. But even assuming either deficiency existed, neither would have authorized the trial court to rewrite the parties' agreement. Had the trial court concluded that it could not impose the bargained-for conviction, it was required to advise the prosecution accordingly and permit the prosecution to withdraw from the agreement. It was not permitted to impose on the prosecution a bargain to which the prosecution had not agreed. *Siebert*, 450 Mich at 511; *Smith*, 502 Mich at 646-647.

To the extent that defendant argues that his plea was defective because it rested on an inaccurate understanding of his prior convictions, that argument does not support the trial court's ruling. When a plea is defective, the remedy is to afford the defendant the opportunity to withdraw the plea, not to revise the agreement in the defendant's favor. *People v Brown*, 492 Mich 684, 687; 822 NW2d 208 (2012). In *Brown*, our Supreme Court rejected the defendant's request to be resentenced in accordance with the unenhanced maximum sentence of which he had been advised and held instead that the defendant must be given the option of allowing his plea to stand or withdrawing it. *Id*. *Guyton* likewise remanded for the defendant to elect whether to withdraw her plea. *Guyton*, 511 Mich at 295. Defendant has cited no authority, and we are aware of none, that

would permit a trial court to remedy a defective plea by sentencing the defendant for a lesser offense over the prosecution's objection while retaining the prosecution's plea concessions.

In any event, defendant did not raise any argument in the trial court regarding the validity of his plea, the trial court did not find his plea involuntary, defendant did not seek to withdraw his plea, and defendant has not filed a cross-appeal raising that claim or seeking alternative relief. In his brief on appeal, defendant affirmatively requests that this Court "allow [his] guilty plea to stand." Under these circumstances, we need not address whether any misunderstanding by defendant at the time of his plea regarding its factual basis calls into question the validity of his plea or entitles him to withdraw it.

III. CONCLUSION

The trial court erred by treating the error in the third-offense notice as foreclosing the enhancement to which defendant pleaded guilty, and it further erred by sentencing defendant for a lesser offense while holding the prosecution to the concessions made in exchange for his plea. We therefore vacate the judgment of sentence in lower court no. 2024-011675-FH and remand for further proceedings not inconsistent with this opinion. We do not retain jurisdiction.

/s/ Matthew S. Ackerman
/s/ Stephen L. Borrello
/s/ Daniel S. Korobkin