

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

VARIEN MARCELLE BENNETT,

Defendant-Appellant.

FOR PUBLICATION

October 27, 2022

No. 354903

Berrien Circuit Court

LC No. 2019-003979-FH

Before: SHAPIRO, P.J., and GADOLA and YATES, JJ.

SHAPIRO, P.J. (*concurring*).

I concur fully in Judge Yates’ opinion. I write separately to note that the degree of knowledge concerning the defendant is not necessarily the sole basis for the rule that absent unavailability of the judge, the defendant is to be sentenced by the judge that took their plea. As stated by the California Supreme Court in *People v Arbuckle*, 22 Cal 3d 749, 756-757; 587 P2d 220 (1978):

As a general principle, moreover, whenever a judge accepts a plea bargain and retains sentencing discretion under the agreement, an implied term of the bargain is that sentence will be imposed by that judge. Because of the range of dispositions available to a sentencing judge, the propensity in sentencing demonstrated by a particular judge is an inherently significant factor in the defendant’s decision to enter a guilty plea

The *Arbuckle* decision was recently reaffirmed in *KR v Superior Court*, 3 Cal 5th 295; 396 P3d 581 (2017), which concluded that absent a waiver the judge who takes the plea must impose the sentence, *id.* at 310-312, and if “internal court administrative practices render that impossible, then . . . defendant should be permitted to withdraw his plea,” *id.* at 305 (quotation marks and citation omitted).

Should the Supreme Court elect to grant leave in this case and consider the viability of the rule we follow today, I suggest they should take into account the reality that the identity of the presiding judge is, for better or worse, a legitimate and often highly significant factor in the defendant’s decision to plead guilty.

/s/ Douglas B. Shapiro