

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

UNPUBLISHED

August 13, 1996

Plaintiff-Appellee,

v

No. 179572

LC No. 94-004174-FH

KYLE STEVEN MASSMAN,

Defendant-Appellant.

Before: Kavanagh, T.G.,* P.J., and R.B. Burns** and G.S. Allen,** JJ.

MEMORANDUM.

Defendant pleaded guilty to operating a motor vehicle under the influence of intoxicating liquor, third offense, MCL 257.625(6); MSA 9.2325(6), and was sentenced to thirty-nine to sixty months' imprisonment. He appeals as of right. We remand for resentencing. This case has been decided without oral argument pursuant to MCR 7.214(A).

The record indicates that the plea agreement was illusory because the trial court, although technically complying with the agreement by stating that it had no objection to defendant being placed in boot camp, effectively rendered that impossible by imposing a minimum sentence which rendered defendant ineligible for boot camp. The thirty-nine month sentence violated the spirit of the plea agreement. See *People v Nixten*, 183 Mich App 95; 454 NW2d 160 (1990). Hence, we remand for resentencing and direct that defendant's minimum sentence shall not exceed thirty-six months (the maximum term for which defendant would still be eligible for boot camp).

Remanded for resentencing in accordance with this opinion. We do not retain jurisdiction.

*Former Supreme Court Justice, sitting on the Court of Appeals by assignment pursuant to Administrative Order 1996-3.

**Former Court of Appeals Judges, sitting on the Court of Appeals by assignment pursuant to Administrative Order 1996-3.

/s/ Thomas G. Kavanagh

/s/ Robert B. Burns

/s/ Glenn S. Allen, Jr.