

QUESTION 12 THE ANSWER TO THIS QUESTION SHOULD GO IN BLUEBOOK IV OR IN EXAMPLIFY ANSWER SCREEN 12

Defendant Don was charged in a Michigan court with one count of receiving and concealing stolen property (RCSP). Don, with his attorney, pled not guilty at the arraignment on the information. The court set a pretrial to be held 30 days later. After the arraignment, Don's attorney asked the prosecutor if there was any offer. The prosecutor said no. Don asked the prosecutor what his sentence would be. The prosecutor said, "I don't know, maybe six months."

Don had two prior felony convictions and he knew the prosecutor could file a sentence enhancement under the Habitual Offender Act. The enhancement would increase the maximum sentence of RCSP from 5 to 10 years. The Act requires that the prosecutor file the notice of enhancement no later than "21 days of the arraignment on the information" or it cannot be filed. MCL 769.13.

Don appeared at the pretrial with his attorney. Don asked about the habitual enhancement and the prosecutor said, "I won't file it if you plead guilty today." Don pled guilty. The entire agreement was written on the plea form: "plea to one count RCSP; no habitual." Don, his attorney and the prosecutor all signed the form.

The court properly complied with all the rules in taking Don's plea. It advised Don of all the rights he waived by his plea of guilty and established a factual basis for the plea. The court specifically asked Don if there were "any other promises, other than those on the form" because Don would be waiving the right to later claim that there were. Don said "no." The court accepted Don's plea as understanding, voluntary and accurately made. Don's sentencing was scheduled for 21 days later. No habitual enhancement was filed.

At sentencing the prosecutor said nothing and Don's attorney argued for probation. Don was sentenced to seven months in jail, not six months.

Don timely moved to set aside his plea. Don claimed his plea agreement was invalid, contending that foregoing the habitual enhancement was meaningless. Don said his sentence agreement was

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invalid because it was not followed and he was dissatisfied with the sentence. Don wants specific performance of the 6-month sentence agreement.

1. Was there a valid plea agreement?
2. Was there a valid sentence agreement for Don to receive a 6-month sentence?
3. Can Don be resentenced because he was dissatisfied with his 7-month sentence?

Applying Michigan law explain all your answers.