

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JERROD KEVIN H. WILLETT,

Defendant-Appellant.

UNPUBLISHED

January 31, 1997

No. 188902

Oakland Circuit Court

LC No. 93-122804-F

Before: Cavanagh, P.J., and Gage and D.A. Burrell,* JJ.

PER CURIAM.

Defendant pleaded guilty of possession with intent to deliver less than fifty grams of cocaine, MCL 333.7401(2)(a)(iv); MSA 14.15(7401)(2)(a)(iv), and possession of a firearm during the commission of a felony, MCL 750.227b; MSA 28.424(2). The trial court sentenced defendant to a term of one to twenty years' imprisonment of the possession with intent to deliver cocaine conviction and a consecutive term of two years' imprisonment on the felony-firearm conviction. Defendant appeals as of right, and we affirm.

Defendant claims that his trial counsel was ineffective for failing to challenge the search warrant and for failing to oppose the prosecutor's motion to reinstate the felony-firearm charge. However, issues that relate solely to the state's capacity to prove factual guilt are waived by an unconditional guilty plea. *People v Vonins (After Remand)*, 203 Mich App 173, 175; 511 NW2d 706 (1993). Likewise, where the alleged deficient acts of defense counsel relate to issues that are waived by a valid unconditional guilty plea, the claim of ineffective assistance of counsel relating to those actions is also waived. *Id.* at 174.

Defendant also argues that the trial court abused its discretion in not allowing defendant to make a conditional plea to the felony-firearm charge. Defendant contends that the trial court's action left him with no recourse but to make an unconditional plea. We disagree. Defendant still had the option of proceeding to trial. If convicted, defendant would then have been able to appeal the felony-firearm

* Circuit judge, sitting on the Court of Appeals by assignment.

conviction. Instead, defendant chose to enter an unconditional plea, despite his awareness that he was waiving his right to appeal all issues unrelated to the propriety of the plea-taking procedure.

Affirmed.

/s/ Mark J. Cavanagh

/s/ Hilda R. Gage

/s/ Daniel A. Burrell