

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

MICHAEL JAMES SPOONER,

Defendant-Appellant.

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UNPUBLISHED

February 28, 1997

No. 185162

Genesee Circuit

LC No. 94-050805-FC

Before: D.F. Walsh,\* P.J., and R.P. Griffin\*\* and W.P. Cynar,\* JJ.

MEMORANDUM.

Defendant pleaded guilty in mid-trial to second-degree murder, MCL 750.317; MSA 28.549, armed robbery, MCL 750.529; MSA 28.797, conspiracy to commit armed robbery, MCL 750.157a; MSA 28.354(1), possession of a firearm by a felon, MCL 750.224f; MSA 28.421(6), possession of a firearm during the commission of a felony, MCL 750.227b; MSA 28.424(2), and habitual offender, second offense, MCL 769.10; MSA 28.1082. He was sentenced in accordance with a plea-based sentence agreement under *People v Cobbs*, 443 Mich 276; 505 NW2d 208 (1993), to concurrent terms of life imprisonment for the second-degree murder, armed robbery, and conspiracy to commit armed robbery convictions, and 4 to 7-1/2 years' imprisonment for the possession of a firearm by a felon conviction, to be served consecutive to a two-year term for the felony-firearm conviction. He appeals as of right, asserting that he is entitled to withdraw his guilty pleas because of ineffective assistance of counsel. We affirm. This case has been decided without oral argument pursuant to MCR 7.214(A).

Although defendant alleges that trial counsel misinformed him regarding his parole eligibility date, he failed to create a separate record factually supporting this claim. See *People v Blythe*, 417 Mich

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\*Former Court of Appeals judges, sitting on the Court of Appeals by assignment pursuant to Administrative Order 1996-10.

\*\*Former Supreme Court justice, sitting on the Court of Appeals by assignment pursuant to Administrative Order 1996-10.

430, 438; 339 NW2d 399 (1983). In any event, even if such erroneous advice was given, defendant did not allege in his motion to withdraw or in his supporting affidavit, nor does he assert on appeal, that had he been correctly informed about his parole eligibility date, he would not have pleaded guilty but instead would have proceeded with his ongoing trial. Nor has defendant alleged any facts supporting a conclusion that eligibility for parole after ten years, but not fifteen, made a difference in his decision to plead guilty. Accordingly, defendant has failed to establish the requisite prejudice necessary to prevail on a claim of ineffective assistance of counsel. *Strickland v Washington*, 466 US 668, 687; 104 S Ct 2052; 80 L Ed 2d 674 (1984); *People v Pickens*, 446 Mich 298; 521 NW2d 797 (1994); *People v Corteway*, 212 Mich App 442, 444-445; 538 NW2d 60 (1995). Indeed, we find this case indistinguishable from *Hill v Lockhart*, 474 US 52; 106 S Ct 366; 88 L Ed 2d 203 (1985), wherein the United States Supreme Court held that a claim of ineffective assistance of counsel had not been established under identical circumstances.

Affirmed.

/s/ Daniel F. Walsh

/s/ Robert P. Griffin

/s/ Walter P. Cynar