

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JOSEPH RICHARD GIROUX,

Defendant-Appellant.

UNPUBLISHED

March 4, 1997

No. 178235

Recorder's Court

LC No. 88-013652

Before: Fitzgerald, P.J., and Griffin and M.R. Knoblock,* JJ.

MEMORANDUM.

Defendant pleaded guilty to first-degree criminal sexual conduct, MCL 750.520b(1)(b)(i); MSA 28.788(2)(1)(b)(i), and was sentenced to nine to forty years' imprisonment. He appealed by delayed application granted in Docket No. 127154, but his conviction was peremptorily affirmed by order of this Court. Defendant attempted to file a second appeal in Docket No. 171449, but was rejected. He then filed a motion for relief from judgment in the trial court which was denied. The trial court also denied defendant's motion for specific findings of fact and conclusions of law and his subsequent motion to withdraw his plea. Defendant now appeals by leave granted from the denial of his motion for relief from judgment. We affirm. This case has been decided without oral argument pursuant to MCR 7.214(E)(1)(b).

Although the record reveals that defendant was not orally advised of the right to remain silent on the record during the plea taking, we hold that he is not entitled to post-appeal relief from judgment. MCR 6.508(D). Defendant has not established the requisite actual prejudice by showing that the defect in the proceedings rendered his plea involuntary such that it would be manifestly unjust to allow the conviction to stand. MCR 6.508(D)(3)(b)(ii). At the time of the plea taking, defendant signed a written plea form which advised him of the trial rights that he was waiving. While the trial court's failure to comply with MCR 6.302 may have entitled defendant to relief on direct appeal, see *Guilty Plea Cases*, 395 Mich 96; 235 NW2d 132 (1975), we conclude that he has not met the standard for obtaining post-appeal relief. MCR 6.508.

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

Affirmed.

/s/ E. Thomas Fitzgerald

/s/ Richard Allen Griffin

/s/ M. Richard Knoblock