

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JAMES ANDERSON CHEATOM,
a/k/a JAMES LEE CHEATUM,

Defendant-Appellant.

UNPUBLISHED

March 18, 1997

No. 184390

Muskegon Circuit Court

LC No. 94-037018-FH

Before: Sawyer, P.J., and Neff and A. L. Garbrecht,* JJ.

PER CURIAM.

Defendant appeals as of right the circuit court's denial of his motion to withdraw his guilty pleas of conspiracy to incite or procure perjury, MCL 750.157a; MSA 28.354(1), MCL 750.425; MSA 28.667, and habitual offender (fourth), MCL 769.12; MSA 28.1084. Defendant also challenges the proportionality of his ten- to forty-year sentence, to be served consecutively to the sentences for which he was on parole when he committed the instant offense.¹ We affirm.

I

There is no absolute right to withdraw a guilty plea after it has been accepted by the trial court. *People v Gomer*, 206 Mich App 55, 56; 520 NW2d 360 (1994). Where a defendant moves to withdraw his plea before sentencing, he bears the burden "to establish a fair and just reason for withdrawal of the plea." *People v Jackson*, 203 Mich App 607, 611; 513 NW2d 206 (1994). Absent such a showing, the denial of the motion will not constitute an abuse of discretion. *Gomer*, *supra* at 59.

After carefully reviewing the record before us, we conclude that the trial court did not abuse its discretion in denying defendant's motion to withdraw his guilty plea. Defendant's general denial of guilt is insufficient to rebut the factual basis for the previously accepted plea. *People v Holmes*, 181 Mich App 488, 496-497; 449 NW2d 917 (1989). Moreover, we agree with the trial court that defense

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

counsel's assistance did not prevent defendant from making an informed and voluntary choice between going to trial and entering into a plea agreement. See generally *People v Corteway*, 212 Mich App 442, 444-445; 538 NW2d 60 (1995).

The trial court did not abuse its discretion in denying defendant's motion to withdraw his guilty plea.

II

Defendant insists that his ten- to forty-year sentence violates the doctrine of proportionality. We disagree. The maximum sentence for conspiracy to incite or procure perjury is five years. MCL 750.157a; MSA 28.354(1), MCL 750.425; MSA 28.667. As an habitual offender (fourth), defendant could have received a sentence of life imprisonment. MCL 769.12; MSA 28.1084. In light of defendant's prior criminal record, which includes violent offenses, and the fact that defendant was on parole when he committed the instant offense, we conclude that defendant's ten-year minimum sentence does not violate the doctrine of proportionality. *People v Milbourn*, 435 Mich 630, 635-636; 461 NW2d 1 (1990).

Affirmed.

/s/ David H. Sawyer

/s/ Janet T. Neff

/s/ Allen L. Garbrecht

¹ In his supplemental brief, defendant also posits that his sentence constitutes cruel and unusual punishment under both the Michigan and United States Constitutions. However, because defendant does not support this assertion with sufficient argument, we deem this issue abandoned. *People v Anderson*, 209 Mich App 527, 538; 531 NW2d 780 (1995). Nonetheless, because we conclude that defendant's sentence is proportionate this argument has no merit. See *People v Williams*, 198 Mich App 537, 543; 499 NW2d 404 (1993).