

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

EDRICK RAY SPEARMAN,

Defendant-Appellant.

UNPUBLISHED

April 1, 1997

No. 186780

Kent Circuit Court

LC No. 94-002816-FH

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

MEMORANDUM.

Pursuant to an agreement, defendant pleaded guilty to 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 was sentenced to 2-1/2 to 20 years' imprisonment. He appeals as of right. We affirm. This case has been decided without oral argument pursuant to MCR 7.214(E)(1)(b).

The trial court did not abuse its discretion in denying defendant's motion to withdraw his plea. *People v Holmes*, 181 Mich App 488, 496; 449 NW2d 917 (1989). Defendant's plea was voluntary and the value of the plea agreement was genuine, valid and known to him. Defendant received the benefit of the plea bargain. *People v Graves*, 207 Mich App 217, 219-220; 523 NW2d 876 (1994); *People v Gomer*, 206 Mich App 55, 58; 520 NW2d 360 (1994); *People v Gonzalez*, 197 Mich App 385, 391; 496 NW2d 312 (1992).

The trial court erred in determining that defendant waived his right to raise scoring objections. MCR 6.429(C)(2)(b) was not negated by *People v Hernandez*, 443 Mich 1; 503 NW2d 629 (1993). However, because recalculation of the variables would not affect the ultimate guidelines' range, the error

*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.

is harmless. *People v Ratkov (After Remand)*, 201 Mich App 123, 127; 505 NW2d 886 (1993); *People v Daniels*, 192 Mich App 658, 675; 482 NW2d 176 (1992). Further, defendant failed to satisfy his burden of showing that the trial court erroneously relied on convictions where defendant had not been represented by counsel. *People v Carpentier*, 446 Mich 19, 29-30; 521 NW2d 195 (1994); *People v Moore*, 391 Mich 426, 436-438; 216 NW2d 770 (1974); *People v Zinn*, 217 Mich App 340; 551 NW2d 704 (1996); *People v Love (After Remand)*, 214 Mich App 296, 299-300; 542 NW2d 374 (1995).

The trial court did not err in denying defendant's motion for resentencing. Resentencing was not necessary because the court determined it would impose the same sentence even if the alleged errors in the guidelines' scoring were corrected. *People v Chesebro*, 206 Mich App 468, 473-474; 522 NW2d 677 (1994); *People v Polus*, 197 Mich App 197, 201-202; 495 NW2d 402 (1992).

Affirmed.

/s/ Daniel F. Walsh

/s/ Robert P. Griffin

/s/ Walter P. Cynar