

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

RAGAYYA KYLE SMITH,

Defendant-Appellant.

UNPUBLISHED

April 4, 1997

No. 192429

Oakland Circuit Court

LC No. 95-141071-FC

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

MEMORANDUM.

Defendant pleaded guilty to two counts of armed robbery, MCL 750.529; MSA 28.797, two counts of assault with intent to rob while armed, MCL 750.89; MSA 28.284, and habitual offender, second offense, MCL 769.10; MSA 28.1082. He was sentenced to enhanced concurrent terms of six to twenty years' imprisonment, and now appeals as of right. We affirm. This case has been decided without oral argument pursuant to MCR 7.214(E)(1)(b).

Defendant has failed to show that his first trial attorney was ineffective. *People v Pickens*, 446 Mich 298, 338; 521 NW2d 797 (1994); *In re Oakland Co Prosecutor*, 191 Mich App 113, 120; 477 NW2d 455 (1991). Nothing in the record supports defendant's claim that he did not understand how the sentencing guidelines operated at the time he entered a *Cobbs* plea (*People v Cobbs*, 443 Mich 276; 505 NW2d 208 [1993]). Defendant was assisted by new counsel before sentencing and it is clear that both defendant and his new counsel were aware of the probation department's recommendation that defendant receive a sentence of four to twenty years' imprisonment. Defendant failed to move to withdraw his pleas before the court proceeded with sentencing. If defendant did not understand the sentencing guidelines and the terms of his plea agreement, it seems reasonable that his

*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.

new attorney would have been aware of this and moved to withdraw defendant's pleas before sentencing.

Defendant has also failed to make an adequate offer of proof to support remanding this matter back to the trial court for an evidentiary hearing. The trial court did not abuse its discretion in denying defendant's motion to withdraw his pleas. *People v Jones*, 190 Mich App 509, 512; 476 NW2d 646 (1991).

Defendant's sentences do not violate the principle of proportionality. *People v Milbourn*, 435 Mich 630, 636; 461 NW2d 1 (1990). By agreeing to enter a *Cobbs* plea, defendant has waived any argument regarding the proportionality of his sentences when it is apparent that he understood how the guidelines operate. *Cobbs, supra*, 443 Mich 285 n 11. Furthermore, defendant received sentences within the guidelines' range even though, as an habitual offender, the guidelines did not apply to him. *People v Haacke*, 217 Mich App 434, 436-438; 553 NW2d 15 (1996).

Affirmed.

/s/ Daniel F. Walsh

/s/ Robert P. Griffin

/s/ Walter P. Cynar