

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

BARBARA ANN LAMBERT,

Defendant-Appellant.

UNPUBLISHED
October 10, 1997

No. 189511
Oakland Circuit Court
LC No. 94-133427-FH

Before: Markey, P.J., and Neff and Smolenski, JJ.

MEMORANDUM.

Defendant appeals by right her convictions, on plea of nolo contendere, of larceny over \$100, MCL 750.356; MSA 28.588, and resisting and obstructing a peace officer in the performance of duty; MCL 750.479; MSA 28.747. The pleas were the result of a bargain, pursuant to which separate charges of stalking were dismissed. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant's sole contention on appeal is that the trial court abused its discretion in denying her motion to withdraw her plea prior to sentencing. At sentencing, defendant was represented by newly retained counsel because previously retained counsel had been discharged. The sole basis asserted in support of the request for withdrawal is that "my client has expressed to me her belief that she has a valid defense, and that she is not guilty of the charges which have been brought against her. . . ."

A motion to withdraw a plea of guilty or nolo contendere before sentence is governed by MCR 6.310(B). The prerequisite is that defendant "first establish that withdrawal of the plea is supported by reasons based on the interests of justice. If sufficient reasons are provided, the burden then shifts to the prosecution to demonstrate substantial prejudice." *People v Spencer*, 192 Mich App 146, 151; 480 NW2d 308 (1991). Here, a conclusory assertion of innocence, when at the plea proceeding defendant stipulated to the accuracy of the police reports on which the trial court relied for factual basis, is inadequate to the task.

While on appeal defendant also contends that dissatisfaction with her original counsel should be factored into the balance, she has failed to present a claim, let alone a colorable claim,

of ineffective assistance of counsel. See *People v Effinger*, 212 Mich App 67, 69-70; 536 NW2d 809 (1995). At the plea proceeding, defendant attributed the charges to bad relations with malevolently motivated neighbors. The charges were actually brought, as the prosecutor noted, by West Bloomfield Police, who observed defendant stealing police funds from a mailbox, and on defendant's resistance of a police officer attempting to arrest her for the larceny, which again had nothing to do with defendant's neighbors. Accordingly, the trial court did not abuse its discretion in denying defendant's motion to withdraw her plea.

Affirmed.

/s/ Jane E. Markey

/s/ Janet T. Neff

/s/ Michael R. Smolenski