

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

TERRY JOSEPH VILLAGOMEZ,

Defendant-Appellant.

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UNPUBLISHED

June 12, 1998

No. 199778

Genesee Circuit Court

LC No. 95-053105 FH

Before: Wahls, P.J., and Jansen and Gage, JJ.

MEMORANDUM.

Defendant pleaded nolo contendere to second-degree home invasion, MCL 750.110a(3); MSA 28.305(a)(3), and was sentenced to three to fifteen years' imprisonment. Defendant appeals by delayed leave granted. We affirm. This case is being decided without oral argument pursuant to MCR 7.214(E).

Defendant argues that his plea-based conviction must be upset because the statute proscribing the offense has been repealed. Defendant's argument is premised on the mistaken belief that he pleaded nolo contendere to the offense of breaking and entering an occupied dwelling. Our review of the record indicates that defendant's plea was to a charge of second-degree home invasion. Accordingly, we decline to upset defendant's conviction. In any event, defendant's claim lacks merit. MCL 8.4a; MSA 2.214; *People v Poole*, 7 Mich App 237, 243; 151 NW2d 365 (1967).

Defendant next argues that the trial court erred when it relied on the sentencing guidelines as scored for the offense of breaking and entering an occupied dwelling to fashion an appropriate sentence for defendant. Defendant agreed to the trial court's use of these guidelines as part of the bargain that secured his plea. Defendant may not request that the court take a certain action and then argue on appeal that the action was error. *People v McCray*, 210 Mich App 9, 14; 533 NW2d 359 (1995).

Defendant has failed to state a cognizable claim of a sentencing guidelines scoring error. *People v Mitchell*, 454 Mich 145, 176-177; 560 NW2d 600 (1997).

Affirmed.

/s/ Myron H. Wahls

/s/ Kathleen Jansen

/s/ Hilda R. Gage