

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

THOMAS J. WESENBERG,

Defendant-Appellant.

UNPUBLISHED

February 19, 1999

No. 202107

Genesee Circuit Court

LC No. 96-053872 FH

Before: Gribbs, P.J., and Saad and P.H. Chamberlain*, JJ.

MEMORANDUM.

Defendant pleaded no contest to one count of operating a motor vehicle while under the influence of intoxicating liquor (OUIL) causing death, MCL 257.625(4); MSA 9.2325(4), and was sentenced to eight to fifteen years' imprisonment. He appeals by right and we affirm.

We are unpersuaded that defendant's sentence is disproportionate to the offense and the offender. Two persons died as a result of the collision caused by defendant, and others were injured, although defendant was only convicted for one of the deaths pursuant to a plea agreement. Defendant's blood-alcohol content was well above the legal limit. This was not defendant's first drunken driving offense. His record contains two prior OUIL convictions within a period of less than eight years prior to the offense in this case. Moreover, we note that defendant's eight-year minimum sentence is well below the maximum penalty allowed for this offense under the two-thirds rule.

We are also unpersuaded by the arguments raised in the supplemental brief filed by defendant in propria persona. Any alleged defects in the assistance of defendant's appellate counsel are cured by our review of the arguments raised in defendant's supplemental brief. See *People v Oster (On Resubmission)*, 97 Mich App 122, 141; 294 NW2d 253 (1980). Any claim by defendant that his plea is involuntary or inaccurate has been waived by his failure to move for plea withdrawal. MCR 6.311(C). Defendant's plea operates to waive any claims of ineffective assistance of trial counsel with regard to the handling of factual defenses. *People v New*, 427 Mich 482, 493; 398 NW2d 358

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

(1986); *People v Vonins (After Remand)*, 203 Mich App 173, 176; 511 NW2d 706 (1993). Finally, we are unpersuaded that defendant's retrograde amnesia rendered him incompetent to stand trial or plead no contest in this case. See *People v Blazina*, 139 Mich App 40; 360 NW2d 329 (1984); *People v Stolze*, 100 Mich App 511; 299 NW2d 61 (1980).

Affirmed.

/s/ Roman S. Gibbs

/s/ Henry William Saad

/s/ Paul H. Chamberlain