

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

EUGENE A. THOMAS,

Defendant-Appellant.

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UNPUBLISHED

July 6, 1999

No. 208170

Kent Circuit Court

LC No. 93-061769 FH

Before: Hoekstra, P. J., and Saad and R. B. Burns\*, JJ.

PER CURIAM.

Defendant conditionally pleaded guilty to possession with intent to deliver 650 or more grams of cocaine, MCL 333.7401(2)(a)(i); MSA 14.15(7401)(2)(a)(i), reserving the right to appeal the trial court's ruling denying his entrapment claim. In a prior appeal, this Court affirmed defendant's conviction. *People v Thomas*, unpublished memorandum opinion of the Court of Appeals, issued May 5, 1995 (Docket No. 171097). Defendant subsequently filed a motion for relief from judgment, which the trial court denied. This Court granted defendant's delayed application for leave to appeal. We affirm.

Any error in failing to substantially comply with MCR 6.005(E) was harmless in light of the overwhelming evidence of defendant's guilt. *People v Grant*, 445 Mich 535, 553; 520 NW2d 123 (1994); *People v Lane*, 453 Mich 132, 138; 551 NW2d 382 (1996). Like the situation in *Lane*, *supra*, "[n]o other result would have been possible, even with the assistance of counsel." *Id.* at 141.

Although there is merit to defendant's claim that the trial court erred in stating that defendant's ineffective assistance of counsel claim was waived by the conditional guilty plea, cf. *People v Vonins (After Remand)*, 203 Mich App 173, 175-176; 511 NW2d 706 (1993); *People v Hartley*, 165 Mich App 219, 222; 418 NW2d 391 (1987), modified and remanded on other grounds 429 Mich 900 (1988), any error was harmless because the trial court proceeded to consider the merits of defendant's claim and concluded that ineffective assistance of counsel had not been established. We find no error with this determination. To the extent that "entrapment by escalation" or "sentencing entrapment"

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

properly may be considered as separate forms of entrapment, see, e.g., *People v Ealy*, 222 Mich App 508, 510-512; 564 NW2d 168 (1997); *People v Killian*, 117 Mich App 220, 223-224; 323 NW2d 660 (1982), the facts of this case do not support either theory. Therefore, trial counsel was not ineffective for failing to argue these specific theories below. *People v Mitchell*, 454 Mich 145, 158; 560 NW2d 600 (1997); *People v Barclay*, 208 Mich App 670, 672; 528 NW2d 842 (1995).

Affirmed.

/s/ Joel P. Hoekstra  
/s/ Henry William Saad  
/s/ Robert B. Burns