

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ERIC VANOMMEREN,

Defendant-Appellant.

UNPUBLISHED

January 28, 2000

No. 215185

Wayne Circuit Court

LC Nos. 96-002736; 96-002737

Before: O'Connell, P.J., and Meter and T.G. Hicks*, JJ.

MEMORANDUM.

Defendant appeals as of right the orders denying his motions to withdraw his guilty pleas to charges of first-degree home invasion, MCL 750.110a(2); MSA 28.305(a)(2), armed robbery, MCL 750.529, MSA 28.797, and possession of a firearm during the commission of a felony, MCL 750.227b; MSA 28.424(2). We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant moved to withdraw his no-contest pleas, asserting that they were involuntary where they were based on trial counsel's misrepresentations that the trial court had granted the prosecutor's motion to admit other-acts evidence of another assault under MRE 404(b). The trial court had not ruled on the prosecutor's motion. A *Ginther* hearing¹ was held, at which defendant and his trial counsel testified. At the conclusion of the hearing, the trial court found that counsel's representation of defendant was without defect, and that it did not believe that counsel represented to defendant that the MRE 404(b) motion had been decided against him. The court concluded that the plea was voluntary and that defendant took it because the sentence bargain was favorable.

"To establish ineffective assistance of counsel in the context of a guilty plea, courts must determine whether the defendant tendered a plea voluntarily and understandingly." *People v Corteway*, 212 Mich App 442, 445; 538 NW2d 60 (1995). Where counsel has failed to properly inform his client, "counsel's deficient representation effectively renders the defendant's guilty plea

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

involuntary because it deprives the defendant of the ability to make an intelligent and informed choice from among his alternative courses of action.” *Id.*

Defendant asserts that his plea was involuntary because it was based on the erroneous representation by counsel that the court had granted the prosecutor’s motion to admit other-acts evidence. However, the trial court rejected this theory, finding no defect in counsel’s representation. The court found, as a factual matter, that trial counsel did not make the misrepresentation to defendant that the prosecutor’s motion had been granted. Defendant has failed to show that this finding, based on an assessment of the credibility of the two witnesses, is clearly erroneous. *People v Everard*, 225 Mich App 455, 458; 571 NW2d 536 (1997); *People v Eggleston*, 149 Mich App 665, 671; 386 NW2d 637 (1986).

Affirmed.

/s/ Peter D. O’Connell

/s/ Patrick M. Meter

/s/ Timothy G. Hicks

¹ *People v Ginther*, 390 Mich 436; 212 NW2d 922 (1973).