

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

TRACY LUIE,

Defendant-Appellant.

UNPUBLISHED
October 10, 2000

No. 222164
Wayne Circuit Court
LC No. 98-008426

Before: McDonald, P.J., and Sawyer and White, JJ.

MEMORANDUM.

Defendant pleaded guilty of fleeing and eluding a police officer, MCL 750.479a; MSA 28.747(1), and was sentenced as an habitual offender, fourth offense, MCL 769.12; MSA 28.1084, to serve one to fifteen years in prison, consecutive to the sentence he was already serving. He appeals by leave granted, and we affirm.

Defendant argues that he is entitled to withdraw his guilty plea because the trial court failed to fully comply with the advice of rights requirements of MCR 6.302 and failed to advise defendant at the plea-taking that he was subject to consecutive sentencing. Defendant also argues that, at the sentencing hearing, the trial court appeared unfamiliar with the facts of the case or the applicable law, including failing to recognize that the decision to impose the statutory maximum sentence was discretionary rather than mandatory. After reviewing the record, we agree with defendant that numerous non-jurisdictional defects were made at both the plea-taking proceeding and sentencing. For example, at the plea-taking proceeding, the trial court completely failed to advise defendant that he was giving up the right to be presumed innocent until proved guilty, MCR 6.302(B)(3)(c), to have the prosecutor prove beyond a reasonable doubt that he is guilty, MCR 6.302(B)(3)(d), and to subsequently claim that his plea was the result of promises or threats that were not disclosed to the court, MCR 6.302(B)(4). Additionally, the court failed to inquire of the prosecutor and defense counsel whether it had complied with subrules (B) through (D), MCR 6.302(E). At sentencing, the trial court initially sentenced defendant to six months in the county jail, but changed it to one to fifteen years in prison, *at defendant's request*, because he expressed a desire to be returned to prison rather than serve any time in the county jail. Defendant was informed at sentencing that consecutive sentencing applied, but he appeared confused as to his new aggregate maximum sentence.

Pursuant to MCR 6.311(C), “[a] defendant convicted on the basis of a plea may not raise on appeal any claim of noncompliance with the requirements of the rules in this subchapter, or any other claim that the plea was not an understanding, voluntary, or accurate one, unless the defendant has moved to withdraw the plea in the trial court, raising as a basis for withdrawal the claim sought to be raised on appeal.” Defendant did not move in a timely manner to withdraw his plea under MCR 6.311(A). Therefore, this issue is not preserved for appeal. *People v Dixon*, 217 Mich App 400, 410; 552 NW2d 663 (1996); *People v Nowicki*, 213 Mich App 383, 385; 539 NW2d 590 (1995). We decline defendant’s request to disregard the general waiver rule, see *People v Richardson*, 144 Mich App 616, 621-622; 376 NW2d 167 (1985), given that the trial court did not completely fail to advise defendant of his rights under MCR 6.302, defendant appeared to be generally knowledgeable of the plea and sentencing process, and he received the sentence that he specifically requested.

Affirmed.

/s/ Gary R. McDonald
/s/ David H. Sawyer
/s/ Helene N. White