

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ROBERT ALLEN DOYLE,

Defendant-Appellant.

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UNPUBLISHED

January 22, 2002

No. 226691

Livingston Circuit Court

LC No. 98-010790-FC

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ROBERT ALLEN DOYLE,

Defendant-Appellant.

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No. 226692

Livingston Circuit Court

LC No. 98-010782-FC

Before: O'Connell, P.J., and White and Smolenski, JJ.

PER CURIAM.

In Docket No. 226691, defendant pleaded no contest to a charge of armed robbery, MCL 750.529. In Docket No. 226692, defendant pleaded no contest to a charge of conspiracy to commit armed robbery, MCL 750.157a. The trial court sentenced defendant to a concurrent term of twenty to forty years' imprisonment for each offense. Defendant appeals by delayed leave granted. We affirm.

**I. Motion to Withdraw Pleas**

Defendant first argues that the trial court abused its discretion by denying his motion to withdraw his no contest pleas. Defendant argues that he was pressured into accepting the pleas because his trial counsel failed to communicate with him, lied to him, and gave him misleading advice regarding the sentences that he might receive as a result of his pleas. Therefore, defendant argues that his pleas were involuntarily given.

There is no absolute right to withdraw a plea after a trial court has accepted it. *People v Kennebrew*, 220 Mich App 601, 605; 560 NW2d 354 (1996). A trial court possesses discretion over whether to grant a defendant's motion to withdraw a plea, and we review the trial court's decision only for an abuse of that discretion. *People v Wilhite*, 240 Mich App 587, 593-594; 618 NW2d 386 (2000). MCR 6.310(B) provides the process for withdrawing a plea:

On the defendant's motion or with the defendant's consent, the court in the interest of justice may permit an accepted plea to be withdrawn before sentence is imposed unless withdrawal of the plea would substantially prejudice the prosecutor because of reliance on the plea. If the defendant's motion is based on an error in the plea proceeding, the court must permit the defendant to withdraw the plea if it would be required by MCR 6.311(B).

Here, defendant moved to withdraw his plea prior to sentencing, claiming that he was unaware of "the potential ramifications" of the pleas. Specifically, defendant argued that he did not understand the sentencing consequences associated with his pleas. Because defendant does not allege any error in the plea-taking procedure, he relies on the trial court's discretionary power to permit withdrawal of the pleas before sentencing. *Wilhite, supra* at 594; MCR 6.310(B). Therefore, defendant bears the burden of showing that withdrawal of the pleas would have been "in the interest of justice," meaning that he had to articulate "a fair and just reason" for withdrawing the pleas. *Wilhite, supra* at 594.

According to defendant, his trial counsel misrepresented the potential sentencing consequences in this matter, and defendant thought that he would receive a lighter sentence. Even if defendant's argument were true, incorrect advice rendered by trial counsel, by itself, does not qualify as a sufficient basis for withdrawal of a defendant's plea. *Wilhite, supra* at 596-597; *People v Gomer*, 206 Mich App 55, 58; 520 NW2d 360 (1994). Moreover, defendant's subjective dissatisfaction with his sentence is not a proper ground for withdrawing his no contest plea. *Wilhite, supra* at 597. In fact, requests to withdraw pleas are to be regarded as frivolous where the circumstances indicate that the defendant's true motive in making the motion is a concern regarding sentencing. *People v Holmes*, 181 Mich App 488, 492; 449 NW2d 917 (1989).

In any event, the record does not support defendant's claim that he misapprehended the sentencing consequences of his pleas. The record indicates that the trial judge, defense counsel, and the prosecutor repeatedly informed defendant, through an interpreter, that the maximum sentence that could be imposed was life imprisonment. During the plea proceeding, defendant acknowledged that he could receive a life sentence, and admitted that he had not been promised any specific sentence, except that the minimum would be within the guidelines, whatever they turned out to be. Defendant's minimum sentence of twenty years was within the guidelines range of ten to twenty-five years. In sum, the record indicates that defendant was well aware of the potential ramifications of his no contest pleas. Because defendant did not establish "a fair and just reason for withdrawal" of the pleas, *Wilhite, supra* at 597, the prosecutor was not required to establish that substantial prejudice would result from the plea withdrawal. *Kennebrew, supra* at 605. The trial court did not abuse its discretion in denying defendant's motion to withdraw his no contest pleas.

## II. Motion for Substitution of Trial Counsel

Defendant next argues that the trial court abused its discretion by denying his motion for substitution of defense counsel. The decision regarding substitution of trial counsel is within the sound discretion of the trial court, and will not be upset on appeal absent an abuse of that discretion. *People v Mack*, 190 Mich App 7, 14; 475 NW2d 830 (1991).

Although an indigent defendant is guaranteed the right to counsel, he is not entitled to have the attorney of his choice appointed through a request that his original attorney be replaced. *Id.* at 14. “Appointment of substitute counsel is warranted only upon a showing of good cause and where substitution will not unreasonably disrupt the judicial process.” *Id.* Good cause exists, for example, where a legitimate difference of opinion develops between a defendant and his appointed counsel with regard to a fundamental trial tactic. *Id.* Here, defendant raised the issue at the plea proceeding, but then stated his desire to continue with his counsel. At sentencing, he again requested new counsel, which request was denied.

We cannot say that the trial court abused its discretion in denying defendant’s request for a substitution of counsel at sentencing because defendant’s request was not supported by a showing of good cause. First, there is no indication that trial counsel was unprepared during the proceedings below. In fact, it appears that counsel was well prepared and competent to represent defendant. Defense counsel managed to negotiate an advantageous plea agreement, whereby the felony-firearm, fourth habitual, breaking and entering, and larceny charges were dismissed and the prosecutor agreed to recommend a minimum sentence within the guidelines range. Our reading of the record indicates that trial counsel vigorously and competently represented defendant.

Although defendant claims that his attorney spent little time with him, the record indicates that several meetings occurred between defendant and his attorney, and that an interpreter was present for some of those meetings. However, even if defense counsel did spend little time with defendant, there is no indication that defendant was prejudiced. Defendant does not point to a single piece of exculpatory information of which defense counsel was unaware due to his alleged inattentiveness. While the amount of time an attorney spends with his client is a factor used in determining whether he is adequately prepared to defend his client, it is not the determinative factor. *People v Hernandez*, 84 Mich App 1, 7; 269 NW2d 322 (1978). It is incumbent upon a defendant to show prejudice originating from his attorney’s alleged lack of preparation. *People v Krist*, 93 Mich App 425, 436; 287 NW2d 251 (1979), rev’d on other grounds 413 Mich 937 (1982). No such showing has been made in the present case. Because defendant has failed to show that his trial counsel’s alleged lack of preparation and inattentiveness prejudiced his defense, the trial court did not abuse its discretion in denying defendant’s motion for a substitution of counsel. *Krist, supra* at 436-437; *Hernandez, supra* at 8.

Although it appears that defendant was dissatisfied with his trial counsel, it does not appear that this dissatisfaction was sufficient to qualify as adequate cause for substitution of counsel. There is no indication that a complete breakdown of the attorney-client relationship had occurred, that communication between defendant and his attorney had ceased, or that there was any disagreement regarding defense strategy. Absent a bona fide irreconcilable dispute regarding, for instance, a substantial defense, there are insufficient grounds for substitution of

counsel. *Krist, supra* at 436-437. In sum, defendant failed to show good cause justifying substitution of counsel, and the trial court did not abuse its discretion in denying defendant's motion.

### III. Deaf Persons' Interpreters Act

Defendant next argues that he was denied his right to an interpreter at his arraignment, pursuant to the Deaf Persons' Interpreters Act (DPIA), MCL 393.501 *et seq.* Defendant argues that, without an interpreter, he could not have understood what took place at his arraignment, and was not properly advised of the nature of the charges against him. Although we conclude that the trial court erroneously failed to provide defendant with an interpreter during his arraignment, we conclude that the error was harmless because defendant has not demonstrated any prejudice from the absence of an interpreter at that proceeding.

The DPIA provides for the mandatory appointment of an interpreter in any action before a court or grand jury where a deaf person is a participant in the action, either as a plaintiff, defendant, or witness. MCL 393.503(1). The interpreter's role is "to perform three specific functions: (1) to interpret the proceedings to the deaf person; (2) to interpret the deaf person's testimony or statements; and (3) to assist in preparation of the action with the deaf person." *Bednarski v Bednarski*, 141 Mich App 15, 20; 366 NW2d 69 (1985); see also MCL 393.503(1).

Any waiver of the right to an interpreter must be made in writing by the deaf person. MCL 393.503(3); *Bednarski, supra* at 20. Furthermore, a trial court that "knows a deaf person will be coming before it is obligated to inform the deaf person of the right to an interpreter." *Id.* However, the deaf person is also required to notify the court of his need for an interpreter, "before the appearance." MCL 393.504(1). Because defendant did not specifically request an interpreter before the arraignment, we review this unpreserved allegation of constitutional error for plain error affecting substantial rights. *People v Carines*, 460 Mich 750, 763-764; 597 NW2d 130 (1999); *People v Snider*, 239 Mich App 393, 420; 608 NW2d 502 (2000).

In the present case, the lower court judge became aware of defendant's hearing impairment at the arraignment. Given the mandatory language contained in MCL 393.503(1), we conclude that the court should have adjourned the arraignment until an interpreter could be appointed for defendant.<sup>1</sup> However, defendant has failed to show that he was prejudiced by the lack of an interpreter at the arraignment. Defendant does not claim that he was actually unaware of the charges against him. Moreover, defendant was clearly informed of the nature of the charges against him, on the record during the plea proceeding, and he demonstrated his understanding of those charges before tendering a no contest plea. Specifically, defendant acknowledged being charged with armed robbery, conspiracy to commit armed robbery, felony-firearm, breaking and entering, and larceny over \$100. Defendant also acknowledged his understanding that the maximum penalty for armed robbery was life imprisonment. Furthermore, defendant admitted that his attorney had previously explained the nature of the charges, to defendant's complete satisfaction. Under these circumstances, we conclude that the

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<sup>1</sup> The court appointed an interpreter for defendant after the arraignment, and the interpreter assisted defendant in the subsequent court proceedings.

lower court's failure to provide an interpreter during defendant's arraignment constituted harmless error.

#### IV. Scoring of the Sentencing Guidelines

Defendant next argues that the trial court erroneously scored the sentencing guidelines, causing defendant to receive a longer sentence than he would have otherwise received. Because defendant committed the offenses in 1998, the judicial sentencing guidelines apply. See MCL 769.34(1); *People v Reynolds*, 240 Mich App 250, 253-254; 611 NW2d 316 (2000). Appellate review of guidelines calculations is limited, and a sentencing court has discretion in determining the number of points to score, provided there is evidence on the record that adequately supports a particular score. *People v Dilling*, 222 Mich App 44, 54; 564 NW2d 56 (1997).

Defendant claims that twenty-five points were erroneously assessed under OV 2 for terrorism, based on a co-defendant's act of locking a victim into a freezer at gunpoint, while defendant and the co-defendants fled the scene. Defendant also claims that fifteen points were erroneously assessed under OV 25 for contemporaneous criminal acts because the breaking and entering charges and the larceny over \$100 charges that were dismissed as a part of defendant's plea bargain did not take place within twenty-four hours of the armed robbery or the conspiracy to commit armed robbery, and because those crimes were dissimilar in nature to the armed robbery offenses. We disagree with defendant's contention that the trial court erroneously scored the variables. The trial court properly considered the fact that the victim of one of the robberies was forced into a freezer at gunpoint, and locked in, allowing defendant to escape. Furthermore, the trial court properly considered the fact that defendant committed similar offenses within six months of the instant offenses. Because the record contained evidence supporting the challenged scoring decisions, we conclude that the trial court properly scored OV 2 and OV 25. *People v Hoffman*, 205 Mich App 1, 24; 518 NW2d 817 (1994).

#### IV. Sentence Proportionality

Finally, defendant argues that the sentences imposed by the trial court were disproportionate. We review a trial court's sentencing decisions for an abuse of discretion. *People v Milbourn*, 435 Mich 630, 653-654; 461 NW2d 1 (1990); *People v Compeau*, 244 Mich App 595, 598; 625 NW2d 120 (2001). A sentencing court abuses its discretion when it violates the principle of proportionality, "which requires sentences imposed by the trial court to be proportionate to the seriousness of the circumstances surrounding the offense and the offender." *Milbourn*, *supra* at 636.

Defendant argues that his sentences were disproportionate because he played a minimal role in the offenses, was gainfully employed at the time of the offenses, and did not pose a danger to the community. We disagree. Regarding both of defendant's convictions, the trial court imposed a minimum sentence of twenty years' imprisonment. Because those sentences fell within the sentencing guidelines range, they are presumptively valid. *People v Broden*, 428 Mich 343, 354-355; 408 NW2d 789 (1987). A defendant's employment and alleged minimal culpability are not unusual circumstances that would overcome the presumption of proportionality. *People v Daniel*, 207 Mich App 47, 54; 523 NW2d 830 (1994). Furthermore, in light of the serious nature of these offenses, a robbery and an attempted robbery perpetrated at gunpoint, together with defendant's lengthy criminal history, we conclude that defendant did

pose a danger to the community. The trial court did not abuse its discretion in imposing twenty-year minimum sentences for armed robbery and conspiracy to commit armed robbery, which both carried a potential sentence of life imprisonment.

Affirmed.

/s/ Peter D. O'Connell

/s/ Helene N. White

/s/ Michael R. Smolenski