

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JOHN DAVENPORT,

Defendant-Appellant.

UNPUBLISHED

November 15, 2005

No. 251616

Wayne Circuit Court

LC No. 03-005786-01

Before: Murphy, P.J., and Sawyer and Meter, JJ.

MEMORANDUM.

Defendant appeals as of right his jury trial conviction of felon in possession of a firearm, MCL 750.224f. Defendant was sentenced to 3 to 7½ years' imprisonment. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(A) and (E).

Defendant asserts that the trial court abused its discretion when it denied his motion for new trial where defendant swore that he was acting in self-defense. This Court reviews for an abuse of discretion a trial court's ruling on a motion for new trial. *People v Cress*, 468 Mich 678, 691; 664 NW2d 174 (2003). Defendant's cursory argument fails on multiple levels.

First, any argument that defendant could not be convicted of being a felon in possession of a firearm because he had a right to possess the firearm predicated on self-defense was not presented at trial. Indeed, the argument was waived and any appellate issue extinguished when defendant stipulated at trial that he had been convicted of a felony and that he did not have the right to possess a firearm under the statute. *People v Carter*, 462 Mich 206, 215; 612 NW2d 144 (2000) (waiver is defined as the intentional relinquishment or abandonment of a known right resulting in the extinguishment of any error relative to an alleged deprivation of the right).

Additionally, the motion for new trial could not be granted on defendant's claim that, had he testified at trial, he would have testified that he acted in self-defense. MCR 6.431(B) permits a trial court to grant a motion for new trial in criminal actions for "any ground that would support appellate reversal of the conviction or because . . . the verdict . . . resulted in a miscarriage of justice." Appellate reversal would not be appropriate on the novel and misplaced argument presented by defendant. To accept defendant's argument would be to permit a defendant in a criminal trial to exercise his or her constitutional right not to testify, yet then allow them to obtain a new trial based on a claim in the motion for new trial that they would have testified in a manner that would support an acquittal. This is not permissible. The claims in defendant's

supporting affidavit do not reflect newly discovered evidence, nor do they constitute a sound legal basis to grant a new trial. See *People v Piazza*, 341 Mich 555, 560; 67 NW2d 735 (1954). Moreover, no miscarriage of justice resulted from denial of the motion for new trial. Finally, the evidence at trial simply did not support a conclusion that defendant was acting in self-defense, where there was no evidence that defendant honestly and reasonably believed that his life was in imminent danger or that there was a threat of serious bodily harm. See *People v Heflin*, 434 Mich 482, 502; 456 NW2d 10 (1990). The trial court did not abuse its discretion in denying the motion for new trial.

Affirmed.

/s/ William B. Murphy

/s/ David H. Sawyer

/s/ Patrick M. Meter