

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DEANDRE ANTHONY BROWN,

Defendant-Appellant.

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UNPUBLISHED

February 5, 2008

No. 274688

Allegan Circuit Court

LC No. 01-012168-FH

Before: Bandstra, P.J., and Donofrio and Servitto, JJ.

PER CURIAM.

Defendant appeals by delayed leave granted from a circuit court order denying his motion for relief from judgment. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

In 2002, defendant pleaded guilty to possession with intent to deliver less than 50 grams of cocaine, MCL 333.7401(2)(a)(iv), pursuant to a plea agreement that included a sentence recommendation by the prosecutor. At sentencing, the trial court declined to follow the recommendation and imposed a prison sentence without affording defendant the opportunity to affirm or withdraw his plea as required by *People v Killebrew*, 416 Mich 189, 209-210; 330 NW2d 834 (1982). Four years later, defendant sought relief from judgment on the basis of this error. The trial court determined that defendant had failed to establish good cause and denied the motion.

In reviewing a trial court's ruling on a motion for relief from judgment, the trial court's factual findings are reviewed for clear error while its ultimate decision is reviewed for an abuse of discretion. *People v McSwain*, 259 Mich App 654, 682-685; 676 NW2d 236 (2003).

A defendant may seek relief from a conviction and sentence no longer subject to appellate review. MCR 6.501. MCR 6.508(D)(3) bars relief "if the criminal defendant's motion alleges a ground for relief, other than jurisdictional defects, that could have been raised on appeal from the conviction and sentence . . . . However, a criminal defendant can avoid the application of this bar if the defendant satisfies" two requirements as provided by the court rule. *McSwain*, *supra* at 686-687. Those requirements are that the defendant demonstrate both good cause and actual prejudice. MCR 6.508(D)(3).

Specifically, MCR 6.508(D)(3) provides:

The court may not grant relief to the defendant if the motion alleges grounds for relief, other than jurisdictional defects, which could have been raised on appeal from the conviction and sentence . . . , unless the defendant demonstrates

(a) good cause for failure to raise such grounds on appeal . . . , and

(b) actual prejudice from the alleged irregularity that support the claim for relief. . . .

There is no dispute that the alleged error could have been raised on appeal had defendant filed a timely application for leave to appeal. Therefore, to obtain relief, defendant must establish good cause for failure to raise the error on appeal. In this context, good cause “requires a showing of some impediment external to the” defendant that impeded his ability to comply with the state’s procedural rules. *People v Carpentier*, 446 Mich 19, 44; 521 NW2d 195 (1994). Ineffective assistance of counsel can satisfy the “good cause” requirement. *People v Reed*, 449 Mich 375, 378; 535 NW2d 496 (1995).

In this case, defendant asserted below and asserts on appeal that he established good cause in accordance with *Reed, supra* because trial counsel was ineffective for failing to raise the *Killebrew* violation and for failing to require the court to offer defendant the option to withdraw his plea. However, because the good cause element is the failure to raise the asserted grounds for relief “on appeal,” an error by trial counsel in the trial court cannot logically constitute good cause for failure to raise a claim on appeal, although it may establish actual prejudice. Rather, the ineffective assistance of counsel cited by the *Reed* Court as establishing good cause is *appellate counsel’s* failure to raise a viable issue on appeal. *Id.* at 382. In this case, defendant has not offered any rational explanation for his failure to raise this issue in a timely application for leave to appeal and thus failed to establish good cause. Therefore, the trial court did not abuse its discretion in denying defendant’s motion. Although the trial court erred in its analysis of the good cause factor, this Court will not reverse where the court reaches the right result for the wrong reason. *People v Lyon*, 227 Mich App 599, 612-613; 577 NW2d 124 (1998).

Affirmed.

/s/ Richard A. Bandstra

/s/ Pat M. Donofrio

/s/ Deborah A. Servitto