

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

RICKIE GENE SPRAGUE,

Defendant-Appellant.

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UNPUBLISHED

May 8, 2008

No. 278007

Genesee Circuit Court

LC No. 06-019145-FH

Before: White, P.J., and Hoekstra and Smolenski, JJ.

PER CURIAM.

Defendant appeals by delayed leave granted his no contest plea-based sentences for breaking and entering with intent, MCL 750.110, and larceny from a person, MCL 750.357. Defendant was sentenced as a second habitual offender, MCL 769.10, to concurrent terms of six years, 11 months to 15 years in prison for these offenses. We affirm. This appeal is being decided without oral argument under MCR 7.214(E).

Defendant argues that the trial court erred when it refused to allow him to withdraw his plea, and that trial counsel rendered ineffective assistance by negligently misrepresenting the possible sentence he would receive. We disagree.

A trial court's denial of a defendant's motion to withdraw a guilty plea is reviewed for an abuse of discretion. *People v Harris*, 224 Mich App 130, 131; 568 NW2d 149 (1997). An abuse of discretion occurs when the trial court's decision falls outside a principled range of outcomes. See *People v Babcock*, 469 Mich 247, 269; 666 NW2d 231 (2003). Our review of defendant's claim of ineffective assistance of counsel is limited to the mistakes apparent on the existing record. *People v Cox*, 268 Mich App 440, 453; 709 NW2d 152 (2005).

There is no absolute right to withdraw an accepted guilty plea. *People v Gomer*, 206 Mich App 55, 56; 520 NW2d 360 (1994). Courts may permit a guilty plea to be withdrawn in the interest of justice before sentencing unless withdrawal of the plea would substantially prejudice the ability to prosecute the defendant because of the prosecutor's reliance on the plea. MCR 6.310(B)(1). In the absence of a procedural error in receiving the plea, a defendant must establish a fair and just reason for withdrawal of the plea. *Harris, supra* at 131; *People v Jackson*, 203 Mich App 607, 611; 513 NW2d 206 (1994). Examples of fair and just reasons for withdrawal include when the plea resulted from fraud, duress or coercion, *Gomer, supra* at 58, when the plea involved erroneous legal advice coupled with actual prejudice to legal rights,

*People v Jackson*, 417 Mich 243; 334 NW2d 371 (1983); *People v Shannon*, 134 Mich App 35, 38; 349 NW2d 813 (1984), or if the bargain on which the plea was based was illusory, i.e., that the defendant received no benefit from the bargain, *Harris, supra* at 132. If the facts of the case indicate that the plea was voluntary, it will be upheld regardless whether the defendant received consideration in return. *Id.* at 132-133. However, MCR 6.310(B)(2)(a) and (b) provide that a defendant is entitled to withdraw the plea if the plea involves a prosecutorial sentence recommendation or agreement for a specific sentence, and the court states that it is unable to follow the agreement or recommendation, or the trial court states that it will sentence defendant to a specified term or within a specified range, and then finds that it is unable to do so.

To the extent defendant's claim rests on an assertion that his plea was due to the ineffective assistance of counsel, the proper focus is on whether the plea was made voluntarily and understandingly. *In re Oakland County Prosecutor*, 191 Mich App 113, 120; 477 NW2d 455 (1991). "Whether a plea is unintelligently made depends on whether counsel's advice was within the range of competence demanded of attorneys in criminal cases, not on whether counsel's advice was right or wrong." *People v Haynes*, 221 Mich App 551, 558-559; 562 NW2d 241 (1997), citing *In re Oakland County Prosecutor, supra* at 122. In addition, "requests to withdraw pleas are generally regarded as frivolous where the circumstances indicate that the defendant's true motivation for moving to withdraw is a concern regarding sentencing." *Haynes, supra* at 559, citing *People v Holmes*, 181 Mich App 488, 492; 449 NW2d 917 (1989). Therefore, counsel's incorrect prediction concerning a defendant's sentence is generally regarded as insufficient to support a claim of ineffective assistance of counsel, or to establish good cause for withdrawal of a plea. *Haynes, supra* at 559.

Here, we find that the trial court did not abuse its discretion in refusing to allow defendant to withdraw his plea. Defendant's dissatisfaction with his sentence is not grounds for withdrawal of his plea. *Haynes, supra*. Defense counsel did not provide ineffective assistance when he gave defendant advice on the possible sentencing range based on the information he had available to him at the time. That the prosecution may have also labored under a misapprehension concerning defendant's extensive criminal history does not change this analysis. The sentencing worksheet initially used by the prosecutor, and then defense counsel, stated that it was "not a binding agreement to actual guidelines or plea offers. It is informational only and will NOT be a basis upon which to withdraw plea." Defendant was clearly informed prior to his plea that counsel's initial calculation was not set in stone, and that it bound neither the prosecutor nor the court to a specific sentence agreement. Any erroneous advice on counsel's part is insufficient to demonstrate that the plea was involuntary. *In re Oakland County Prosecutor, supra* at 124. Moreover, defendant received a substantial benefit from his bargain, with the reduction of charges and his habitual offender status. He cannot show that the basis for the plea was illusory. Nor has defendant ever asserted his innocence or another defense. Thus, this is clearly not a case where defendant has been improperly induced by promises of leniency in order to give up a meritorious defense. See *Id.* Under the circumstances, we conclude that, because defendant did not establish "a fair and just reason for withdrawal" of the plea, the trial court did not abuse its discretion in denying defendant's motion to withdraw his no contest plea.

Affirmed.

/s/ Joel P. Hoekstra

/s/ Michael R. Smolenski