

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DALE DUWAYNE OTIS, JR.,

Defendant-Appellant.

UNPUBLISHED

October 21, 2008

No. 280248

Hillsdale Circuit Court

LC No. 05-290610-FH

05-290656

Before: Servitto, P.J. and Donofrio and Fort Hood, JJ.

PER CURIAM.

Defendant appeals by leave granted from an order that denied defendant's motion to withdraw his guilty plea. Because the trial court sentenced defendant in accordance with his pleas of guilty, defendant received the benefit of the plea agreement that did not include a sentencing agreement, and, the trial court advised defendant that his guilty plea as a second drug offender allowed for a doubled penalty, we affirm. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

Defendant was charged with numerous crimes in four different cases. In case numbers 05-290775 and 05-290773, defendant was charged with absconding. In case number 05-290610, defendant was charged with (1) carrying a concealed weapon; (2) felon in possession of a firearm; and (3) possession of a taser. In case number 05-290656, defendant was charged with: (1) manufacturing methamphetamine; (2) operating a drug laboratory within 500 feet of a residence; (3) possession of methamphetamine as a second offender; (4) possession of marijuana as a second offense; and (5) possession of anhydrous ammonia in a container not approved by law as a third felony. As part of a plea deal, defendant pleaded guilty to carrying a concealed weapon, MCL 750.227, felon in possession of a firearm, MCL 750.224f, possession of methamphetamine (second charge), MCL 333.7403(2)(b)(i), and possession of anhydrous ammonia in a container not approved by law (third felony), MCL 750.502d. In exchange, the charges of possession of a taser, manufacturing methamphetamine, operating a drug lab, possession of marijuana, and absconding were dismissed.

At defendant's sentencing, the trial court noted that the guidelines were 19 to 38 months' imprisonment for the possession of methamphetamines conviction. However, pursuant to *People v Williams*, 268 Mich App 416; 707 NW2d 624 (2005), the trial court doubled both the minimum and maximum sentence 38 to 76 months' imprisonment. Nearly two years later defendant moved to withdraw his guilty plea based on the fact that he was unaware that his minimum

sentence could be doubled. He alleged that the plea was not knowingly or voluntarily made. He also argued that he was entitled to specific performance of the plea agreement. The trial court denied the motion and this court granted defendant's delayed application for leave to appeal.

A trial court's decision to deny 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). There is no absolute right to withdraw an accepted guilty plea. *People v Gomer*, 206 Mich App 55, 56; 520 NW2d 360 (1994). 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 where the plea resulted from fraud, duress, or coercion, *Gomer, supra* at 58, where 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 where the bargain on which the plea was based was illusory and 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.* 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 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.

Defendant specifically pleaded guilty as a second drug offender, even after being warned by the trial court that it "essentially doubles the penalty." In addition, this Court's decision in *Williams* did not declare new law but simply reviewed existing law. Defendant believes that he is entitled to specific performance of the plea agreement, but there was never any agreement regarding what his sentence would be. The bargain simply involved defendant pleading guilty to certain charges in order to have numerous other charges dismissed. There is absolutely nothing in the record that would indicate a sentence agreement was ever entered into. While defendant may not have received the sentence he had hoped for, it was clear that he benefited from the plea.

Affirmed.

/s/ Deborah A. Servitto

/s/ Pat M. Donofrio

/s/ Karen M. Fort Hood