STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED November 20, 2008
v	No. 279508 Wayne Circuit Court
JONATHAN MILLER, Defendant-Appellant.	LC No. 06-000746-01

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

PER CURIAM.

Defendant appeals by leave granted his plea-based conviction for possession of a firearm during the commission of a felony (felony-firearm), second offense, MCL 750.227b. The trial court sentenced him to five years' imprisonment. The sole issue on appeal is whether the trial court improperly coerced defendant's plea. Because we conclude that defendant's plea was not coerced, we affirm. This appeal has been decided without oral argument under MCR 7.214(E).

II. Facts and Procedural History

In December 2005, officers responded to a noise complaint at a residence. In addition to the noise complaint, the officers believed that a person with an outstanding warrant lived at the residence. After arriving at the residence, an officer entered the basement through a side door with his weapon drawn. The officer testified at defendant's preliminary examination that, as he entered the home and proceeded up the stairs to the main level, defendant appeared in the doorway to the kitchen with a black semi-automatic handgun and pointed it at the officer. The officer responded by firing his gun. Defendant ran into the living room where there were several other people from the party. The officers arrested defendant and recovered a loaded handgun from near the doorway in the kitchen.

The prosecutor charged defendant with four crimes: possession of a firearm by a felon, MCL 750.224f, felony-firearm, second-offense, assault with a dangerous weapon, MCL 750.82, and assaulting, resisting or obstructing an officer, MCL 750.81d(1). The prosecutor also gave notice that he was charging defendant as a third offense habitual offender. MCL 769.11.

At a March 2006 plea hearing, defendant's counsel indicated that defendant wished to proceed to trial. After which, the trial court asked about the offer in the case. The prosecutor stated that the people had offered to drop the felon in possession, assault with a dangerous

weapon, and assaulting, resisting or obstructing an officer charges and drop the habitual offender notice in exchange for a guilty plea on the charge of felony-firearm, second-offense, which carried a mandatory five year prison sentence.

After the prosecutor informed the court about the plea offer, the court inquired about the bond that had been set. The court's clerk indicated that the bond had been set at $10,000. The court then noted that, when it had set the bond, it was unaware that the charge involved an assault on a police officer and determined that the bond should be raised: "The trial date is coming up very quickly. Defendant's attendance at the trial date now becomes very important. As there does not appear to be a resolution of the case, the court is going to increase the bond to fifty thousand cash, surety or ten percent."

Immediately after the trial court's decision to raise defendant's bond, defendant's counsel requested a sidebar discussion. After the sidebar, defendant's counsel requested a late sentencing date, which the trial court granted. Defendant was then sworn in and pleaded to the single count of felony-firearm, second offense. After taking defendant's plea, the trial court ordered the bond to remain at $10,000, but added a tether condition.

The trial court held defendant's sentencing in July 2006. At the sentencing, defendant's counsel indicated that defendant wanted to withdraw his plea. The trial court refused to permit the withdrawal, because there was "nothing to indicate, on the record, that it wasn't a knowing and voluntary plea." Defendant immediately argued that his plea was not voluntary, but coerced:

> Ain't no way in the world nobody in this courtroom, even this prosecutor, would believe my big black ass jumped in front of four white police at gun point, and they didn't kill me. It's impossible to be believe that shit. And you knew it, you—no way in the world you, as a judge, should have told me to—you out on bond right now, you out on bond; this what you said as a judge. You out on bond right now today, but I'm going to withdraw your bond, and I'm going to raise your bond up. But if you plead guilty right now, I would let you go back home—that you as a judge is very wrong.

The court apparently indicated its disagreement, to which defendant responded, "Yes, you did that." The court declined to argue with the defendant: "You are talking about something and that may be your view. But you can order the transcript." The court then invited defendant to exercise his right to appeal and sentenced defendant to five years in prison.

Defendant now appeals.

II. Coerced Plea

On appeal, defendant argues that the trial court should have permitted him to withdraw his plea because his plea was not knowingly and voluntarily made. Specifically, defendant contends that the trial court effectively coerced him into making the plea by increasing his bond.

A. Standard of Review

This Court reviews a trial court's denial of a defendant's motion to withdraw a guilty plea for an abuse of discretion. *People v Harris*, 224 Mich App 130, 131; 568 NW2d 149 (1997). "A trial court abuses its discretion when it selects an outcome that does not fall within the range of reasonable and principled outcomes." *People v Young*, 276 Mich App 446, 448; 740 NW2d 347 (2007).

B. The Right to Withdraw a Plea

A defendant does not have an absolute right to withdraw a plea. *People v Gomer*, 206 Mich App 55, 56; 520 NW2d 360 (1994). In the absence, of procedural error in receiving the plea, a defendant must establish a fair and just reason for withdrawal of the plea. *Harris*, *supra* at 131. Fair and just reasons for withdrawal include situations where the plea resulted from fraud, duress, or coercion. *Gomer*, *supra* at 58. Hence, if defendant were coerced into making his plea, that coercion would be grounds for withdrawing his plea.

On appeal, defendant contends that his case involves facts similar to those found in *People v Weatherford*, 132 Mich App 165; 346 NW2d 920 (1984).

In *Weatherford*, the defendant had earlier agreed to plead guilty to the charged offense on the first day of trial. *Id.* at 167. However, when the day set for trial arrived, defendant informed the court that he no longer wanted to plead guilty. *Id.* Both the prosecutor and defendant's trial counsel indicated that they were not prepared to proceed because they had believed that defendant would plead guilty. *Id.* After learning of defendant's intention to proceed to trial, the trial court asked the defendant if he had earlier agreed to plead guilty. The defendant responded by admitting that he had agreed to plead, but stated that he did not feel that he had had enough time before trial. *Id.* at 167-168. For that reason, the defendant requested an adjournment. *Id.* at 168. The trial court immediately denied the requested adjournment. The court also, without explanation, raised the defendant's bond and ordered that he be remanded into custody. *Id.* However, the trial court indicated that if the defendant wanted "to change [his] mind and still go ahead with the plea agreement within the next five minutes, you can do so but, if it isn't done, we will remand you to jail." *Id.* After spending four days in jail, the defendant again agreed to plead guilty. *Id.*

On appeal, this Court noted that the trial court did not have the authority to raise the defendant's bond, *id.* at 170, and concluded that the "record strongly suggests that the trial court deliberately raised the amount of defendant's bail to coerce him into pleading guilty," *id.* at 169. The Court opined that the coercion had its desired effect, because the defendant only pleaded guilty after spending four days in jail. *Id.* at 170. This Court also found it noteworthy that the trial court reinstated the original bond on its own motion after the defendant pleaded guilty. *Id.* at 169. From this, the Court concluded that "the atmosphere in which defendant tendered his guilty plea was so inherently coercive that he should be given the opportunity to withdraw his plea." *Id.* at 170.

Although there are some similarities between the facts of this case and the facts in *Weatherford*, we do not agree that the facts of this case warrant the conclusion that defendant's plea was coerced.

In this case, the trial court did not inquire about defendant's decision to proceed to trial; it simply asked whether the prosecution had made a plea offer and then accepted defendant's decision to proceed to trial. Likewise, although the trial court brought up the issue of bond on its own, at no point did it make statements that support an inference that it raised defendant's bond in an attempt to coerce him to plead guilty. Rather, the trial court explained that when it set the bond it was not aware of the fact that defendant's charges involved an assault against an officer. It also made statements that suggest that it thought defendant might now be a flight risk. These are valid reasons for modifying a release decision. See MCR 6.106(H)(2). Further, although the trial court ultimately restored the cash amount of the bond, because it was apparently still concerned about defendant's flight risk, the trial court ordered defendant to wear a tether as a condition of bond. Hence, on this record, the trial court's stated reasons for changing the bond do not appear to have been a mere pretext. Finally, defendant did not agree to plead guilty only after spending time in jail. Rather, he agreed to plead guilty after a sidebar discussion, which his own counsel initiated. And, after being sworn in at the same hearing, defendant indicated that he was not induced to plead guilty by a threat, but rather was pleading guilty of his own free will and only because he was guilty. On this record, we cannot conclude that "the atmosphere in which defendant tendered his guilty plea was so inherently coercive that" the trial court should have granted his request to withdraw his plea. *Id.* at 170.

There were no errors warranting relief.

Affirmed.

/s/ Peter D. O'Connell
/s/ Michael R. Smolenski