

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ANGELIQUE JEAN BERDINKA,

Defendant-Appellant.

UNPUBLISHED

March 17, 2009

No. 279511

Oceana Circuit Court

LC No. 06-006068-FC

Before: Sawyer, P.J., and Zahra and Shapiro, JJ.

MEMORANDUM.

Defendant appeals by delayed leave granted, seeking reversal of the trial court's denial of her motion to withdraw her guilty plea. Defendant pleaded guilty to armed robbery, MCL 750.529, and to possession of a firearm during the commission of a felony (felony-firearm), MCL 750.227b. Defendant was sentenced to four years, three months to 25 years' imprisonment for armed robbery, and to a consecutive two-year term on the felony-firearm count. We affirm.

Defendant's sole issue on appeal is that the trial court abused its discretion in denying her motion to withdraw her plea of guilty to felony-firearm. *People v Adkins*, 272 Mich App 37, 38; 724 NW2d 710 (2006). Defendant argues that it was not until after the robbery had been completed by her two male accomplices that she came to know that the two men were armed. To establish a factual basis for the felony-firearm charge at issue here, the trial court was required to find that defendant's accomplices carried or possessed firearms in the commission of the robbery, that defendant performed acts to assist them in carrying or possessing the firearms during the robbery, and that defendant intended the carrying or possessing of firearms during the robbery or had knowledge that her accomplices intended to carry or possess firearms during the robbery. *People v Moore*, 470 Mich 56, 70-71; 679 NW2d 41 (2004). The plea transcript demonstrates that the trial court could properly find a factual basis for each of these elements. See *People v Jones*, 190 Mich App 509; 476 NW2d 646 (1991).

At the motion hearing, the trial court indicated that its primary ground for denying defendant's motion was that the court disbelieved defendant's testimony at the motion hearing denying knowledge of the firearms. We give due regard to the trial court's credibility

assessments. *People v Nielsen*, 34 Mich App 261, 265; 191 NW2d 121 (1971).¹ Accordingly, we see no abuse of discretion amounting to a miscarriage of justice in the court's denial of the motion to withdraw the plea of guilty to felony-firearm.

Affirmed.

/s/ David H. Sawyer
/s/ Brian K. Zahra
/s/ Douglas B. Shapiro

¹ The vitality of this tenet of the law is made all the more apparent in this case, where the court indicated that it had come into the hearing inclined to grant defendant's motion, but that this changed once the court heard defendant's testimony.