STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED July 27, 2010
v	No. 291845 Wayne Circuit Court
LARRY LOVE, Defendant-Appellant.	LC No. 08-018673-FH

Before: METER, P.J., and SERVITTO and BECKERING, JJ.

PER CURIAM.

Defendant was convicted by a jury of felon in possession of a firearm, MCL 750.224f, carrying a concealed weapon, MCL 750.227(2), and possession of a firearm during the commission of a felony, second offense, MCL 750.227b. The trial court, applying a fourth-offense habitual offender enhancement under MCL 769.12, sentenced defendant to concurrent prison terms of 42 months to 15 years for the felon in possession conviction and two to five years for the CCW conviction, to be served consecutively to a five-year term of imprisonment for the felony-firearm conviction. Defendant appeals as of right. We affirm.

Before trial, defendant attempted to plead guilty pursuant to a plea agreement. The agreement called for defendant to plead guilty to felony-firearm, second offense, in exchange for the dismissal of the other charges and the habitual offender notice. The court refused to accept defendant's plea. We review the trial court's decision to reject defendant's plea for an abuse of discretion. *People v Plumaj*, 284 Mich App 645, 648; 773 NW2d 763 (2009).

"Before accepting a guilty plea, a trial court must question the defendant to ascertain whether there is support for a finding that the defendant is guilty of the offense to which he is pleading guilty." *People v Watkins*, 468 Mich 233, 238; 661 NW2d 553 (2003). The court may "'make whatever inquiry it deems necessary in its sound discretion to assure itself the defendant is not being pressured to offer a plea for which there is no factual basis.'" *Id*. at 239, quoting *Mitchell v United States*, 526 US 314, 324; 119 S Ct 1307; 143 L Ed 2d 424 (1999).

Defendant attempted to plead guilty to felony-firearm. The elements of felony-firearm are that the defendant possessed a firearm during the commission or attempted commission of any felony other than those four enumerated in the statute. MCL 750.227b(1); *People v Mitchell*, 456 Mich 693, 698; 575 NW2d 283 (1998); *People v Avant*, 235 Mich App 499, 505; 597 NW2d 864 (1999). Carrying a concealed weapon is one of the four enumerated felonies and thus cannot

support a conviction of felony-firearm. MCL 750.227b(1). However, a felony-firearm conviction may be predicated on felon in possession of a firearm. *People v Calloway*, 469 Mich 448, 452; 671 NW2d 733 (2003); *People v Dillard*, 246 Mich App 163, 167-168; 631 NW2d 755 (2001).

At the plea hearing, defendant admitted to picking up and pocketing a firearm in a police car. He also admitted that he had previously been convicted of the felony of intent to pass false title to an automobile and he stated that his possessory rights had not been restored. The trial court rejected defendant's plea because it concluded that defendant was admitting only to "happening upon" a firearm and because the plea had not in actuality been "agreed to by . . . [d]efendant . . . ." Given the following colloquy that took place between the trial court and defendant, we cannot conclude that the trial court abused its discretion in rejecting the plea:

> *THE COURT*: So in actuality *you don't believe that you had possession of this firearm*? *This is something that was pressed upon you, so to speak*, because you were put into the back end of the scout car --
>
> *DEFENDANT LOVE*: *Exactly*.
>
> *THE COURT*: -- and this handgun just happened, by mere happenstance, happened to be there?
>
> *DEFENDANT LOVE*: Well, I guess -- I don't know, your Honor. I was apprehended by one police car and pretty much strip searched before they put me in their car. Then when the second car came on the scene I was passed off to the car in question where the gun was at and they did the same thing and they know I didn't have a firearm on me so when they put me in the back of the police car --
>
> *THE COURT*: Because they put you in the scout car?
>
> *DEFENDANT LOVE*: Yes, sir. And I was taken home to drop my mountain bike off. I was taken to the hospital. They handcuffed me from the back to the front because of my cooperation and then they take me [sic] to the police station.
>
> *THE COURT*: Well, undoubtedly the police must have a different story than what you've just given me. Otherwise you wouldn't have been charged, I don't imagine, is that right?
>
> *MS. WILLIS* [*the prosecutor*]: That's correct, your Honor.
>
> *THE COURT*: Well, it doesn't do us any good to accept a plea by a Defendant that is not agreed to by the Defendant and it doesn't sound as if the Defendant is in agreement with the same facts as the police might give testimony to. [Emphasis added.]

In light of this exchange, we simply cannot conclude that the trial court's decision fell outside the range of principled outcomes. *People v Carnicom*, 272 Mich App 614, 616-617; 727 NW2d 399 (2006). MCR 6.302(A) indicates that a "court may not accept a plea of guilty . . . unless it is convinced that the plea is understanding, voluntary, and accurate." Defendant's statements raised doubts concerning his perception of his own guilt – he responded "[e]xactly" when the court asked him if he "in actuality" did not believe that he had possession of the firearm – and we therefore refuse to hold that the trial court's decision constituted an abuse of discretion.

Moreover, there is no basis to conclude that an objection by defendant's attorney would have persuaded the court to rule differently, and therefore defendant's ineffective assistance claim must fail. See *People v Matuszak*, 263 Mich App 42, 60; 687 NW2d 342 (2004) (counsel is not ineffective for failing to raise a meritless objection).

Affirmed.

/s/ Patrick M. Meter
/s/ Deborah A. Servitto
/s/ Jane M. Beckering