

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ORLANDO CEPADA EDWARDS,

Defendant-Appellant.

UNPUBLISHED

August 17, 2010

No. 292435

Kalamazoo Circuit Court

LC No. 06-000384-FH

Before: M.J. KELLY, P.J., and MARKEY and OWENS, JJ.

PER CURIAM.

Defendant pleaded guilty to resisting and obstructing an officer performing a duty, MCL 750.81d(1), and was sentenced to 30 days in jail.¹ Defendant appeals by leave from the trial court's denial of his motion for relief from judgment. We affirm.

Defendant argues that the trial court erred when it denied defendant's motion for relief from judgment. He maintains that because he was innocent of disturbing the peace, the crime for which he allegedly resisted arrest, the officer lacked probable cause to arrest him. He further maintains that, because the arresting officer lacked probable cause to arrest him for disturbing the peace, his guilty plea for resisting and obstructing was involuntary and rendered the plea proceedings defective. We disagree.

The trial court may not grant postappeal relief regarding claims that "could have been raised on appeal from the conviction and sentence or in a prior motion" unless a defendant can show both good cause for failing to raise the grounds for relief earlier and that the alleged irregularity resulted in actual prejudice. MCR 6.508(D)(3); see also *People v McSwain*, 259 Mich App 654, 680-681; 676 NW2d 236 (2003). Good cause may be established by showing ineffective assistance of counsel, or "by showing that some external factor prevented counsel from previously raising the issue" *People v Reed*, 449 Mich 375, 378-379; 535 NW2d 496

¹ Defendant was initially charged with resisting and obstructing and with disturbing the peace, MCL 750.170. The prosecutor had also filed a notice that defendant was a second habitual offender. MCL 769.10. In return for defendant's guilty plea and pursuant to a plea agreement, the prosecutor moved to dismiss the disturbing the peace charge and the habitual offender notice.

(1995). A court may also waive the good cause requirement if it concludes that there is a significant possibility that the defendant is innocent of the crime. *Id.* at n 1; MCR 6.508(D)(3).

Because defendant pleaded guilty, he must show “the defect in the proceedings was such that it renders the plea an involuntary one to a degree that it would be manifestly unjust to allow the conviction to stand” to establish actual prejudice. MCR 6.508(D)(3)(b)(ii). Defendant can also show actual prejudice if “the irregularity was so offensive to the maintenance of a sound judicial process that the conviction should not be allowed to stand regardless of its effect on the outcome of the case.” MCR 6.508(D)(3)(b)(iii). “It is well established that we review a trial court’s grant of relief from judgment for an abuse of discretion and that we review a trial court’s findings of fact supporting its ruling for clear error.” *McSwain*, 259 Mich App at 681.

We find that defendant has shown good cause due to appellate counsel’s ineffective assistance, which caused defendant to lose his opportunity for a direct appeal.

Generally, a guilty plea must be made understandingly, voluntarily, and accurately. *People v Plumaj*, 284 Mich App 645, 648; 773 NW2d 763 (2009); MCR 6.302. Here, defendant appears to argue that the defect in the plea proceeding was that the trial court incorrectly found that the arresting officer had probable cause to arrest him. Defendant pleaded guilty to resisting and obstructing with the agreement that the charge of disturbing the peace and the habitual offender notice would be dismissed. However, defendant failed to preserve any claim that the arresting officer lacked probable cause to arrest him, which he could have done through a “conditional plea” of guilty. See *People v Williams*, 160 Mich App 738, 740; 408 NW2d 540 (1987). The trial court asked defendant “Beyond what’s been stated on the record, has anyone promised you anything else that’s causing you to plead guilty?” Defendant responded “No.” A conditional plea must have the consent of the prosecutor and the court, and must specify the issue reserved for appeal. MCR 6.301(C)(2); *People v Andrews*, 192 Mich App 706, 707; 481 NW2d 831 (1992). Thus, because defendant did not make a conditional plea he has waived all claims regarding the prosecutor’s capacity or ability to prove his guilt, including his claim that the arresting officer lacked probable cause to initially arrest him for disturbing the peace. *People v New*, 427 Mich 482, 491; 398 NW2d 358 (1986). Defendant’s related claim that his seizure was unlawful was also waived by his guilty plea. *Id.*; *People v Kline*, 113 Mich App 733, 735; 318 NW2d 510 (1982).

Moreover, even were we to find that defendant did not waive his claim of error, we would find that his argument is meritless. This Court has held that, “a person may not use force to resist an arrest made by one he knows or has reason to know is performing his duties regardless of whether the arrest is illegal under the circumstances of the occasion.” *People v Ventura*, 262 Mich App 370, 377; 686 NW2d 748 (2004). Regardless of whether the arresting officer had probable cause to arrest defendant for disturbing the peace, sufficient evidence supported the finding that defendant unlawfully used force to resist this arrest. The officer was in full uniform, and his patrol car was fully marked as a police vehicle. According to the officer’s preliminary examination testimony, not only did defendant repeatedly use profanity in his dealings with the officer, he also physically prevented the officer from handcuffing him and struggled with the officer to prevent the officer from placing him in the back of the patrol car. Moreover, defendant admitted that he resisted arrest by a police officer. Thus, defendant is not entitled to relief because he has not shown that he was actually innocent. The trial court properly found a factual basis for defendant’s guilty plea.

Nor do we find any other irregularities in the plea proceeding that would render defendant's plea involuntary. The trial court adequately questioned defendant to determine whether any threats were made, what promises were made, and whether his plea was made voluntarily, and instructed defendant that his guilty plea would waive all his rights he would otherwise have. Additionally, the trial court instructed defendant, "Do you understand, also, that if your plea of guilty is accepted you're giving up any claim that the plea was a result of promises or threats that have not been disclosed to the Court at this plea proceeding or any claim that it was not your own choice to enter this plea?" Defendant's responses indicated that he understood the plea agreement and that his decision to plead guilty was voluntarily made. Thus, the trial court properly found that that defendant was not prejudiced by any defect in the plea proceedings.

We affirm.

/s/ Michael J. Kelly

/s/ Jane E. Markey

/s/ Donald S. Owens