

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff-Appellee,

UNPUBLISHED
February 9, 2012

v

RANDY STONEY ODEM,
Defendant-Appellant.

No. 302539
Gratiot Circuit Court
LC No. 09-005840-FH

Before: FITZGERALD, P.J., and WILDER and MURRAY, JJ.

PER CURIAM.

Defendant appeals by leave granted from his plea of guilty to one count of conducting a criminal enterprise, MCL 750.159i(1).¹ Because we conclude that the record demonstrates a sufficient factual basis for the trial court to accept defendant's plea, we affirm the trial court's denial of defendant's motion to withdraw his plea.

This prosecution arose from a series of break-ins in Gratiot County. The prosecution and defendant entered into a plea agreement whereby defendant agreed to plead guilty to one count of conducting a criminal enterprise in return for a prosecutorial sentencing recommendation. The prosecution also agreed not to seek to sentence defendant as an habitual offender and to delay or waive certain costs associated with the conviction. During his plea hearing, defendant admitted to being driven to and from the sites of the break-ins by a particular friend.

Following sentencing, defendant moved to withdraw his plea, arguing that the trial court erred in finding an adequate factual basis for his plea existed because the record contained insufficient evidence that defendant was employed by or associated with an enterprise while committing his crimes. The trial court denied the motion. A trial court's decision to accept a plea of guilty is reviewed by this Court for abuse of discretion, *People v Plumaj*, 284 Mich App 645, 648; 773 NW2d 763 (2009), as is a court's refusal to permit the withdrawal of a plea, *People v Fonville*, 291 Mich App 363, 376; 804 NW2d 879 (2011). An abuse of discretion

¹ The trial court sentenced defendant to a prison term of 9 to 20 years in conformity with a *Killebrew* (*People v Killebrew*, 416 Mich 189; 330 NW2d 834 (1982)) plea agreement.

occurs when the trial court's decision results in an outcome outside the range of principled outcomes. *People v Carnicom*, 272 Mich App 614, 616-617; 727 NW2d 399 (2006).

A trial court must satisfy itself that a sufficient factual basis exists for a defendant's plea before a defendant's plea can be accepted. MCR 6.302(D)(1); *Fonville*, 291 Mich App at 377. "When reviewing whether a factual basis for a plea was adequate, this Court considers whether the fact-finder could have found the defendant guilty on the basis of facts elicited from the defendant at the plea proceeding." *People v Adkins*, 272 Mich App 37, 39; 724 NW2d 710 (2006). A factual basis to support a plea exists if an inculpatory inference can be drawn from what the defendant has admitted, notwithstanding the fact that an exculpatory inference could also be drawn. *People v Jones*, 190 Mich App 509, 511-512; 476 NW2d 646 (1991).

A defendant does not have an absolute right to withdraw his plea after it has been accepted by the trial court. *People v Haynes (After Remand)*, 221 Mich App 551, 558; 562 NW2d 241 (1997). A motion to withdraw a plea after sentencing should only be granted if there was error in the plea proceeding that entitles the defendant to have the plea set aside. MCR 6.310(C); *People v Montrose (After Remand)*, 201 Mich App 378, 380; 506 NW2d 565 (1993).

MCL 750.159i(1) provides that "[a] person employed by, or associated with, an enterprise shall not knowingly conduct or participate in the affairs of the enterprise directly or indirectly through a pattern of racketeering activity." MCL 750.159f(a) defines "enterprise" as "an individual, sole proprietorship, partnership, corporation, limited liability company, trust, union, association, governmental unit, or other legal entity or a group of persons associated in fact although not a legal entity. Enterprise includes illicit as well as licit enterprises." Defendant does not contest that the five break-ins he committed establishes a "pattern of racketeering activity," or that he committed "racketeering offenses."

Defendant first argues that this Court suggested in *People v Gonzalez*, 256 Mich App 212, 220; 663 NW2d 499 (2003), that an enterprise must be an ongoing organization separate and distinct from the pattern of racketeering activity in which it engaged. In *Gonzalez*, this Court interpreted MCL 750.159(i) by analogy to the federal Racketeering Influence and Corrupt Organizations Act (RICO), 18 USC 1961 *et seq.* *Gonzalez*, 256 Mich App at 220. To prove the existence of an enterprise under RICO, the government must show "1) an ongoing organization with some sort of framework or superstructure for making and carrying out decisions; 2) that the members of the enterprise functioned as a continuing unit with established duties; and 3) that the enterprise was separate and distinct from the pattern of racketeering activity in which it engaged." *Id.*, quoting *United States v Chance*, 306 F3d 356, 373 (CA 6, 2002). This Court in *Gonzalez* adopted this framework for analyzing charges under MCL 750.159(i). *Id.*

Our Supreme Court denied Gonzalez's application for leave to appeal, but stated that the panel of this Court's "discussion of the federal RICO statute, and burdens of proof thereunder, have no relevance to MCL 750.159(i)(1)." *People v Gonzalez*, 469 Mich 967, 967; 671 NW2d 536 (2003). The Court further stated that the panel's discussion of the federal statute was "contrary to our canons of legislative construction." *Id.*

When, as here, the statute is unambiguous, the appellate court must assume that the legislature intended its plain meaning and the statute must be enforced as

written. Stated differently, a court may read nothing into an unambiguous statute that is not within the manifest intent of the legislature as derived from the words of the statute itself. [*Id.*]

The Court advised future courts to look to the expressly defined terms of the statute rather than the federal RICO statute for guidance. *Id.*

We hold that a factual basis existed to support defendant's plea of operating a criminal enterprise. The plain terms of the statute require that defendant, who is clearly a "person," be "employed by, or associated with, an enterprise," and here there is evidence that defendant was associated with an enterprise – i.e., his friend who drove him to and from the scene of the break-ins, while committing these crimes. "Associate" means "to come together as partners, friends or companions." Websters New Collegiate Dictionary (8th Edition, 1980). This definition recognizes that to associate means to "come together" with someone else, whether it is an individual, sole proprietorship, or other entity coming within the statutory definition of enterprise. MCL 750.159f(a). Defendant was "associated" with an enterprise because he came together with someone falling within the definition of enterprise.² The trial court did not abuse its discretion in finding that a factual basis existed for defendant's plea of operating a criminal enterprise.

Affirmed.

/s/ E. Thomas Fitzgerald
/s/ Kurtis T. Wilder
/s/ Christopher M. Murray

² Defendant's argument that the statute requires both participants in the enterprise to have "knowingly participated in the affairs of the enterprise" is also contrary to the plain language of the statute. MCL 750.159i(1) provides that "[a] person employed by, or associated with, an enterprise shall not knowingly conduct or participate in the affairs of the enterprise directly or indirectly through a pattern of racketeering activity." There is no language in the statute indicating that all participants must knowingly participate in the racketeering activity. Nonetheless, evidence on the record is sufficient to support a finding that the friend knowingly participated in the racketeering activities at issue.