

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

CLAUDE THEODORE HOFFMAN,

Defendant-Appellant.

UNPUBLISHED

June 2, 1998

No. 191446

Saginaw Circuit Court

LC No. 94-009628-FH

Before: Hoekstra, P.J., and Jansen and Gage, JJ.

MEMORANDUM.

Following a plea of nolo contendere to the charge of attempted false pretenses with intent to defraud over \$100, MCL 750.218; MSA 28.415, defendant was sentenced to six to sixty months' imprisonment. Defendant appeals as of right, challenging the denial of his motion to withdraw his plea. We affirm.

Defendant argues that the trial court abused its discretion in denying his motion. The decision to grant or deny a motion to withdraw a plea of nolo contendere "rests within the sound discretion of the trial court. That decision will not be disturbed on appeal unless there is a clear abuse of discretion resulting in a miscarriage of justice." *People v Eloby (After Remand)*, 215 Mich App 472, 475; 547 NW2d 48 (1996).

We are persuaded that the evidence presented shows that the trial court correctly concluded that defendant's plea was knowingly and voluntarily made. Of the three expert witnesses called at the hearing addressing defendant's motion to withdraw his nolo contendere plea, only Dr. Evans had any contact with defendant during the time that the plea was entered. Dr. Evans testified that in his opinion, as of approximately one week prior to entry of the nolo contendere plea -- a time when defendant was on the medication that allegedly adversely affected his ability to make a knowing and voluntary plea -- defendant could knowingly participate in any court proceeding. This testimony supports the observations of the trial court that both at the plea proceeding and another contemporaneous trial, defendant's cognitive function was not impaired by the medication. We defer to the trial court's unique vantage point to observe and evaluate defendant, particularly because defendant took the stand and

testified at the contemporaneous trial. Accordingly, we conclude that the trial court's denial of defendant's motion to withdraw his plea did not evidence an abuse of discretion. *Id.*

Affirmed.

/s/ Joel P. Hoekstra

/s/ Kathleen Jansen

/s/ Hilda R. Gage