

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

BILL DAVID VOCK,

Defendant-Appellant.

UNPUBLISHED

June 12, 1998

No. 196082

Alcona Circuit Court

LC No. 95-009051-FC

Before: McDonald, P.J., and O'Connell and Smolenski, JJ.

PER CURIAM.

Defendant pleaded guilty to one count of second-degree criminal sexual conduct (CSC II), MCL 750.520c(1)(a); MSA 28.788(3)(1)(a), and to being an habitual offender, second offense, MCL 769.10; MSA 28.1082. The trial court sentenced defendant to twelve to 22 ½ years' imprisonment. Defendant appeals as of right. We affirm.

Defendant first argues his guilty plea is invalid because the trial court elicited an admission of facts supporting his guilty plea before advising him of his constitutional right to remain silent and before advising him his guilty plea waived that right. Our review of this issue is precluded because defendant failed to move to withdraw his guilty plea in the trial court. MCR 6.311(C); *People v Dixon*, 217 Mich App 400, 410; 552 NW2d 663 (1996). In any event, defendant's claim is without merit. The trial court advised defendant of his right to remain silent and that his plea waived this right prior to accepting defendant's plea. MCR 6.302 and the cases defendant cites require nothing more.

Next, defendant argues he should be allowed to withdraw his plea because it was induced by a statement defense counsel made on the record that defendant interpreted as a promise of leniency. This issue is also not properly preserved for our review. MCR 6.311(C); *Dixon, supra*. Moreover, the record does not support defendant's claim. See *People v Haynes*, 221 Mich App 551, 568-569; 562 NW2d 241 (1997).

Defendant further argues his guilty plea was coerced. Defendant claims a statement defense counsel made led him to believe he would receive the maximum possible sentence if he asserted his right to a jury trial. Again, MCR 6.311 precludes this Court from reviewing this issue, and defendant presents an argument that lacks merit. The record provides no support for defendant's claim that his

plea was coerced. Defendant takes counsel's statement out of context. Counsel merely observed the likely outcome if defendant's case proceeded to trial.

Next, defendant argues he received ineffective assistance of counsel when he entered his guilty plea because his defense counsel had a conflict of interest, violated attorney-client privilege, failed to provide defendant an adequate presentencing opportunity to review the presentence report, and failed to effectively allocute at defendant's sentencing hearing. We disagree. Because defendant failed to move for a new trial or evidentiary hearing regarding ineffective assistance of counsel, this Court is precluded from reviewing this issue unless the record contains sufficient detail to support defendant's claims, and, if so, review is limited to the record. *People v Barclay*, 208 Mich App 670, 672; 528 NW2d 842 (1995).

Defendant argues defense counsel had a conflict of interest with his effective representation of defendant because, due to his failure to prepare for trial, he faced contempt charges from the trial court. Defendant also contends defense counsel's statement that defendant had admitted guilt to him violated the attorney-client privilege and constituted ineffective assistance. It is clear from the record that in spite of counsel's situation and statement, defendant's plea was made knowingly and understandingly. Accordingly, defendant's claim fails. *People v Swirles (After Remand)*, 218 Mich App 133, 138; 553 NW2d 357 (1996).

Defendant also claims defense counsel was ineffective because he did not ensure defendant had an adequate opportunity to review the presentence report. The record does not support defendant's claim. Defendant indicated on the record he had reviewed the report with his attorney prior to sentencing. Although defendant now claims he missed mistakes in the report because he was rushed, our review is limited to the record. *Barclay, supra* at 672.

Defendant's last challenge to counsel's representation involves counsel's argument at sentencing. We will not second guess counsel on this matter of trial strategy. *People v Sawyer*, 222 Mich App 1, 3; 564 NW2d 62 (1997).

Next, defendant argues he is entitled to resentencing because the trial court imposed sentence on the basis of inaccurate information contained within the presentence report. Defendant has waived this issue by failing to object to the alleged erroneous information at sentencing. *People v Bailey*, 218 Mich App 546,647; 554 NW2d 391 (1996). In any event, defendant's argument is without merit because the record clearly shows the trial court did not weigh the alleged mistakes when imposing sentence.

Defendant also argues he is entitled to resentencing because the trial court failed to understand it was not required to impose the maximum possible enhanced sentence. We disagree. The trial court's statements during sentencing indicate it understood its discretion.

Finally, defendant contends this Court should remand this case for the preparation of a presentence report. This Court was provided with a copy of the presentence report in this matter. We see no reason for a remand.

Affirmed.

/s/ Gary R. McDonald
/s/ Peter D. O'Connell
/s/ Michael R. Smolenski