

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

KENNETH R. TRANCHIDA,

Defendant-Appellant.

UNPUBLISHED

July 6, 1999

No. 201445

Oakland Circuit Court

LC No. 95-141820 FC

Before: Collins, P.J., and Jansen and White, JJ.

PER CURIAM.

Defendant pleaded guilty to second-degree murder, MCL 750.317; MSA 28.549, and was sentenced to life imprisonment as a fourth felony habitual offender, MCL 769.12; MSA 28.1084. He appeals by delayed leave granted. We affirm.

On appeal, defendant first argues that there was an inadequate factual basis to support his guilty plea. In reviewing the adequacy of the factual basis for a plea, this Court considers whether a finder of fact could properly convict on the facts elicited from the defendant at the plea proceeding. *Guilty Plea Cases*, 395 Mich 96, 128-129; 235 NW2d 132 (1975); *People v Hogan*, 225 Mich App 431, 433; 571 NW2d 737 (1997). A factual basis for acceptance of a plea exists if an inculpatory inference can reasonably be drawn by a jury from the facts admitted by the defendant, even if an exculpatory inference could also be drawn and defendant asserts the latter is the correct inference. *Guilty Plea Cases*, *supra* at 130; *People v Thew*, 201 Mich App 78, 85; 506 NW2d 547 (1993), quoting *People v Jones*, 190 Mich App 509, 511-512; 476 NW2d 646 (1991).

Four elements must be satisfied to convict a defendant of second-degree murder: (1) a death, (2) caused by an act of the defendant, (3) with malice, and (4) without justification or excuse. *People v Goecke*, 457 Mich 442, 463-464; 579 NW2d 868 (1998). “Malice is defined as the intent to kill, the intent to cause great bodily harm, or the intent to do an act in wanton and wilful disregard of the likelihood that the natural tendency of such behavior is to cause death or great bodily harm.” *Id.* at 464.

At the plea proceeding in this case, defendant admitted that he caused the victim’s death. He stated that he “pushed [the victim] where she hit her head.” In response to questions by the court, he

admitted knowing that death or great bodily harm was likely to result from his action. Defendant also admitted that there was no justification or excuse for his action. Drawing inculpatory inferences, a finder of fact could properly convict defendant of second-degree murder. Therefore, while we acknowledge that the factual basis for defendant's plea was minimal, we find that it was sufficient to support his guilty plea.

Defendant also contends that the trial court abused its discretion in denying his motion to withdraw his guilty plea. We review a trial court's denial of a defendant's motion to withdraw a guilty plea for an abuse of discretion. *People v Lamar Harris*, 224 Mich App 130, 131; 568 NW2d 149 (1997).

There is no absolute right to withdraw a guilty plea once it has been accepted. *People v Gomer*, 206 Mich App 55, 56; 520 NW2d 360 (1994). Under MCR 6.310(B), "the court in the interest of justice may permit an accepted plea to be withdrawn before sentence is imposed unless withdrawal of the plea would substantially prejudice the prosecutor because of reliance on the plea." When a defendant moves to withdraw his guilty plea before sentencing, the burden is on the defendant to establish a fair and just reason for the withdrawing the plea. *Lamar Harris*, *supra* at 131. If the defendant is able to satisfy this burden, the prosecution must then establish that substantial prejudice would result from allowing the defendant to withdraw the plea. *People v Kennebrew*, 220 Mich App 601, 605; 560 NW2d 354 (1996). If the defendant fails to satisfy this burden, the trial court does not abuse its discretion in denying the motion. *Id.*

Defendant contends the absence of a factual basis for his plea, the presence of a meritorious defense, and ineffective assistance of counsel warranted the withdrawal of his plea. See *People v Jackson*, 203 Mich App 607, 613; 513 NW2d 206 (1994). We disagree. As discussed above, there was an adequate basis for the plea. Furthermore, there is nothing in the record supporting the accident theory propounded by defense counsel for the first time at sentencing. Rather, the record indicates that defendant told the police that on the day the victim died, she had broken up with her boyfriend, had no place to live, and had bills to pay but no money. According to defendant, the victim was sadder than he had ever seen her, and he loved her so much that he decided "to put her out of her misery and to end it for her." Unlike *People v Thew*, 201 Mich App 78, 95-96; 506 NW2d 547 (1993), where after reviewing the record, the court concluded that there might have been a valid defense to the offense to which the defendant had pleaded guilty, there was no such showing in this case.

Finally, the record does not support a claim of ineffective assistance of counsel. As noted by the prosecution, counsel filed several pre-trial motions for competency and criminal responsibility examinations, a motion for independent psychiatric evaluation, a motion to quash, a motion to suppress defendant's confession of guilt made at his arraignment, a motion for discovery, a motion to prohibit mention of a polygraph test, a motion to confine the medical examiner's testimony, a motion to exclude defendant's prior record, a motion for change of venue, and a motion to suppress. Defendant's unsupported claim of innocence was insufficient to establish that the withdrawal of his plea was in the interest of justice. Because defendant did not

meet his burden of establishing a fair and just reason for the withdrawal of his guilty plea, the trial court did not abuse its discretion in denying defendant's motion.

Affirmed.

/s/ Jeffrey G. Collins

/s/ Kathleen Jansen

/s/ Helene N. White