

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

LARRY ELIHU BELL,

Defendant-Appellant.

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UNPUBLISHED  
November 2, 1999

No. 213502  
Genesee Circuit Court  
LC No. 92-046688 FH

Before: Whitbeck, P.J., and Gribbs and White, JJ.

MEMORANDUM.

Defendant appeals by delayed leave granted the trial court's order denying his motion to withdraw his guilty plea. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant pleaded guilty to probation violation. Shortly thereafter, he was found incompetent to stand trial in connection with proceedings in an unrelated case. The court in the instant case sentenced defendant to five to fifteen years in prison. Subsequently, the court granted defendant's motion for resentencing for the reason that it had been unaware of the finding of incompetence. Prior to conducting the resentencing, the court denied defendant's motion to withdraw his guilty plea. The court found that at the time the plea was entered, no evidence suggested that defendant was incompetent. The court resentenced defendant to four to fifteen years in prison, with credit for 1,126 days. A panel of this Court affirmed that sentence.

The decision to grant or deny a motion to withdraw a guilty plea after sentencing is within the discretion of the trial court. Absent an abuse of discretion resulting in a miscarriage of justice, we will not disturb the trial court's decision on appeal. *People v Ovalle*, 222 Mich App 463, 465; 564 NW2d 147 (1997).

We affirm. Defendant entered the plea of guilty to probation violation one month before he was found incompetent in proceedings in an unrelated case. The finding of incompetency cannot be deemed to be conclusive evidence that defendant was incompetent at the time he entered the plea in the instant case. A review of the plea hearing transcript establishes that defendant was aware of the nature of the

proceedings, attempted to explain his actions, and responded appropriately to questions from the court. Because no evidence suggested that defendant was incompetent at the time the plea was entered, no further proceedings to establish defendant's competency at that time were warranted. *People v Lucas*, 393 Mich 522, 528-529; 227 NW2d 763 (1975). The trial court did not abuse its discretion by denying defendant's motion to withdraw his plea of guilty to probation violation. *Ovalle, supra*.

Affirmed.

/s/ William C. Whitbeck

/s/ Roman S. Gibbs

/s/ Helene N. White