

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ROLANDO RICARDO HERNANDEZ,

Defendant-Appellant.

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UNPUBLISHED

April 21, 2000

No. 220151

Ingham Circuit Court

LC No. 98-073129-FC

Before: Collins, P.J., and Neff and Smolenski, JJ.

MEMORANDUM.

Defendant appeals by delayed leave granted his plea based conviction for second-degree murder, MCL 750.317; MSA 28.549. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

The trial court did not abuse its discretion in denying defendant's motion to set aside his guilty plea. MCR 6.311. At the plea taking, defendant was advised that he faced a possible life sentence. There was no sentencing agreement, and defendant was informed that there were no promises or projections made as to his possible sentence. The trial court properly found that the plea was tendered knowingly, understandingly, and voluntarily, and there was no basis for withdrawal of the plea. *People v Haynes (After Remand)*, 221 Mich App 551, 563; 562 NW2d 241 (1997). Where defendant tendered a plea voluntarily and understandingly, he cannot establish that he was denied the effective assistance of counsel. *People v Corteway*, 212 Mich App 442; 538 NW2d 60 (1995).

Defendant argues that his forty to eighty year sentence was disproportionate. This Court will review the proportionality of a sentence for abuse of discretion. *People v Alexander*, 234 Mich App 665, 679; 599 NW2d 749 (1999). A sentence within the guidelines is presumptively valid. *People v Broden*, 428 Mich 343; 408 NW2d 789 (1987). A defendant must present to the trial court any unusual circumstances that would establish that a sentence within the guidelines is

disproportionate. *People v Rivera*, 216 Mich App 648, 652; 550 NW2d 593 (1996). Defendant has failed to identify any factors that would render the sentence disproportionate.

Affirmed.

/s/ Jeffrey G. Collins

/s/ Janet T. Neff

/s/ Michael R. Smolenski