

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

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ANTHONY RUFFIN,

Defendant-Appellant.

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UNPUBLISHED  
October 31, 2000

No. 222694  
Wayne Circuit Court  
Criminal Division  
LC No. 88-001966

Before: Griffin, P.J., and Cavanagh and Gage, JJ.

PER CURIAM.

Defendant appeals as of right from his plea-based conviction of possession with intent to deliver 50 grams or more but less than 225 grams of cocaine, MCL 333.7401(2)(a)(iii); MSA 14.15(7401)(2)(a)(iii). We affirm.

On October 2, 1991 defendant pleaded guilty to the above-stated charge in return for dismissal of a charge of possession with intent to deliver less than 50 grams of cocaine, MCL 333.7401(2)(a)(iv); MSA 14.15(7401)(2)(a)(iv). In response to inquiries from the court, defendant indicated that he had not been promised anything other than that which was contained in his agreement with the prosecutor. In addition, he stated that no one had promised him that the court would take any particular action. When providing a factual basis for the plea, defendant stated that he had narcotics on his person, but dropped the narcotics to the ground when he encountered the police. Defendant stated that he was carrying 112 rocks of crack cocaine for the purpose of selling them. The trial court accepted the plea, and defendant was continued on bond.

Defendant did not appear for sentencing, and remained a fugitive for eight years. He was apprehended, and sentencing was scheduled for August 27, 1999. At that time, defendant moved to withdraw his guilty plea or for an evidentiary hearing. He asserted that he was induced to plead guilty based upon discussions of the trial court's discretionary authority to depart from the mandatory minimum sentence, that he was factually innocent, and that his counsel made misrepresentations regarding the case. The trial court denied the motion, noting that the transcript of the plea hearing reflected that defendant denied that any promises other than those on the record had been made to

induce him to plead guilty. The court also noted that the right to withdraw a plea was not absolute, and could be waived if intervening factors occurred between the plea and the sentencing. *People v Kean*, 204 Mich App 533; 516 NW2d 128 (1994); *People v Garvin*, 159 Mich App 38; 406 NW2d 469 (1987). The court concluded that by failing to appear for sentencing and remaining a fugitive for eight years, defendant failed to fulfill the plea agreement and thus waived his right to withdraw his plea. The court sentenced defendant to thirteen and one-half to twenty years in prison, with credit for one hundred days.

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). A defendant who moves to withdraw a guilty plea before sentencing must establish a fair and just reason for the withdrawal. *People v Jackson*, 203 Mich App 607, 611; 513 NW2d 206 (1994). We review a trial court's denial of a motion to withdraw a guilty plea for an abuse of discretion. *People v Kennebrew*, 220 Mich App 601, 605; 560 NW2d 354 (1996).

Defendant argues that the trial court erred by denying his motion to withdraw his guilty plea or for an evidentiary hearing. We disagree. Defendant's claim that he is actually innocent and that he fabricated a factual basis for the charge is wholly unsubstantiated. A review of the record indicates that defendant gave a detailed factual basis from which a factfinder could have found that he was guilty beyond a reasonable doubt of the charge of possession with intent to deliver 50-225 grams of cocaine. MCL 333.7401(2)(a)(iii); MSA 14.15(7401)(2)(a)(iii); *People v Hogan*, 225 Mich App 431, 433; 571 NW2d 737 (1997). Furthermore, no support exists for defendant's allegation that his counsel made certain misrepresentations on which he relied to his detriment. During the plea hearing, defendant swore on the record that no undisclosed promises had been made to him. Nothing indicates that counsel misrepresented the state of the law to defendant or made promises of leniency to him. We conclude that defendant's plea was knowing, understanding, and voluntary, and that the trial court did not abuse its discretion by denying his motion to withdraw the plea. MCR 6.310(B); *People v Haynes (After Remand)*, 221 Mich App 551, 562-563; 562 NW2d 241 (1997); *People v Holmes*, 181 Mich App 488, 496; 449 NW2d 917 (1989) (no abuse of discretion in denying motion to withdraw plea when true motivation for seeking withdrawal is sentencing concern).

Next, defendant argues that he was denied the effective assistance of counsel at sentencing in that counsel failed to review the presentence report with him, and failed to challenge allegedly inaccurate information regarding his contacts with the criminal justice system. This issue is without merit. Defendant and his counsel were given the opportunity to review the presentence report, as required. MCR 6.425(2)(b)(3). Defendant's assertion that he did not thoroughly review the report with counsel is directly contradicted by counsel's representation to the court that he and defendant reviewed the report with defendant's family, and found it to be accurate. Moreover, during a colloquy with the court, defendant did not maintain that he did not have the opportunity to review the report to his satisfaction. Defendant's exchange with the court indicates that defendant was aware of the charges to which the court referred. At that time, he did not challenge the accuracy of the information contained in the report. Defendant has demonstrated neither deficient conduct by counsel, nor resulting prejudice. *People v Pickens*, 446 Mich 298, 314; 521 NW2d 797 (1994).

In addition, defendant argues that he is entitled to be resentenced because the presentence report contained inaccurate information. Specifically, he contends that the prior criminal history section of the report contained misleading and inaccurate information pertaining to contacts with the criminal justice system that did not result in convictions or that could not be verified. This issue is without merit. Defendant's assertion of inaccuracy is wholly unsubstantiated. A presentence report is intended to fully acquaint the court with a defendant's background; therefore, it must be broad in scope. *People v Potrafka*, 140 Mich App 749, 751; 366 NW2d 35 (1985). A presentence report must contain a section detailing the defendant's prior criminal convictions and juvenile adjudications. MCR 6.425(A)(1). This history may include arrests and juvenile charges without convictions. *People v Cross*, 186 Mich App 216, 218; 463 NW2d 229 (1990). No error warranting resentencing occurred.

Finally, defendant argues that his minimum term of thirteen and one-half years is disproportionate and was based on inaccurate information. We disagree. The offense to which defendant pleaded guilty carries a statutorily mandated term of not less than ten years nor more than twenty years in prison. A legislatively mandated sentence is presumptively proportionate and valid. *People v Williams*, 189 Mich App 400, 404; 473 NW2d 727 (1991). The sentence imposed by the trial court is within the range allowed by law. MCL 333.7401(2)(a)(iii); MSA 14.15(7401)(2)(a)(iii); *People v Tanner*, 387 Mich 683; 199 NW2d 202 (1972). Defendant has not established that the sentence is disproportionate. *People v Milbourn*, 435 Mich 630; 461 NW2d 1 (1990).

Affirmed.

/s/ Richard Allen Griffin

/s/ Mark J. Cavanagh

/s/ Hilda R. Gage