

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JIMMIE CARD,

Defendant-Appellant.

UNPUBLISHED

April 6, 2001

No. 228661

Wayne Circuit Court

LC No. 99-000172

Before: Talbot, P.J., and Sawyer and F.L. Borchard*, JJ

PER CURIAM.

Defendant appeals by delayed leave granted his plea-based conviction of first-degree home invasion, MCL 750.110a(2); MSA 28.305(a)(2). We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant was charged with first-degree home invasion, domestic violence, MCL 750.81(2); MSA 28.276(2), domestic violence, third offense, MCL 750.81(4); MSA 28.276(4), and habitual offender, second offense, MCL 769.10; MSA 28.1082. Defendant pleaded guilty to home invasion, domestic violence, and domestic violence, third offense, in exchange for dismissal of the habitual charge and a recommendation from the prosecution that the minimum term for home invasion not exceed three years. In establishing a factual basis for the plea, defendant stated that he went to an apartment occupied by his wife, kicked in the door, and entered the residence without permission. He slapped his wife, and removed various items from the residence. The trial court accepted the plea, and imposed concurrent terms of three to twenty years in prison, ninety days in jail, and one to two years in prison, all with credit for 138 days, for the convictions of home invasion, domestic violence, and domestic violence, third offense, respectively.

Defendant moved to withdraw his plea to the charge of first-degree home invasion on the ground that the factual basis was insufficient because he forcibly entered the marital home. He asserted that he needed no permission to enter the marital home. The trial court denied the motion, finding that the factual basis was sufficient because defendant admitted that he did not have permission to enter the residence. On appeal, defendant challenges only the conviction of first-degree home invasion.

* Circuit judge, sitting on the Court of Appeals by assignment.

There is no absolute right to withdraw a guilty plea once the trial court has accepted it. *People v Davidovich*, 238 Mich App 422, 425; 606 NW2d 387 (1999), *aff'd* 463 Mich 446; 618 NW2d 579 (2000). If a defendant moves to withdraw a plea after sentence has been imposed, the decision to grant or deny the motion is within the trial court's discretion. *Id.* We will not disturb the trial court's decision unless that decision constituted a clear abuse of discretion resulting in a miscarriage of justice. *Id.*

Defendant argues that a sufficient factual basis was not established for the charge of home invasion because he admitted that he forcibly entered the marital home. He contends that because he was not under a restraining order, he had an absolute right to enter the marital home. Cf. *People v Pohl*, 202 Mich App 203; 507 NW2d 819 (1993); *People v Szpara*, 196 Mich App 270; 492 NW2d 804 (1992). Therefore, he could not be found guilty under the facts as presented.

We disagree and affirm defendant's conviction of first-degree home invasion. Entry of the dwelling without permission is an essential element of the offense of first-degree home invasion. MCL 750.110a(2); MSA 28.305(a)(2). To enter "'without permission' means without having obtained permission to enter from the owner or lessee of the dwelling or from any other person lawfully in possession or control of the dwelling." MCL 750.110a(1)(c); MSA 28.305(a)(1)(c). At the plea hearing, defendant did not indicate that he owned, leased, or resided in the dwelling which he entered without permission. No evidence established that the dwelling was in fact the marital home. For this reason, defendant's reliance on *Pohl*, *supra*, and *Szpara*, *supra*, is misplaced. In those cases, we recognized that the right to enter one's own home can be restrained by entry of an appropriate order. In the instant case, defendant referred to the dwelling as his wife's residence, and stated that he had no permission to enter the home. A factual basis for acceptance of a guilty plea exists if an inculpatory inference can be drawn from the facts admitted by the defendant. *Guilty Plea Cases*, 395 Mich 96, 128-132; 235 NW2d 132 (1975). This is true even if an exculpatory inference could also be drawn, and the defendant asserts that the exculpatory inference is correct. *Id.* The facts as recited by defendant were sufficient to support an accurate plea to the charge of first-degree home invasion. MCR 6.302(A), (D)(1). The trial court did not abuse its discretion by denying defendant's motion to withdraw the plea. *Davidovich*, *supra*.

Affirmed.

/s/ Michael J. Talbot
/s/ David H. Sawyer
/s/ Fred L. Borchard