

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

WILLIAM HALE GOSS, JR.,

Defendant-Appellant.

UNPUBLISHED

December 18, 2001

No. 233365

Genesee Circuit Court

LC No. 00-007117-FC

Before: White, P.J., and Talbot and E.R. Post*, JJ.

MEMORANDUM.

Defendant appeals as of right from a plea-based conviction of third-degree criminal sexual conduct, MCL 750.520d(1)(a), for which he was sentenced to five to fifteen years in prison. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant's sole claim on appeal is that he was deprived of effective assistance of counsel at the plea proceeding because his attorney told him that he would be able to appeal the trial court's ruling on the motion to suppress when in fact his unconditional plea waived any such claim, *People v New*, 427 Mich 482, 495-496; 398 NW2d 358 (1986), and thus his plea was not knowingly and voluntarily made. We disagree. First, because defendant failed to raise this claim below in a motion for a new trial or an evidentiary hearing, review is limited to the existing record, *People v Snider*, 239 Mich App 393, 423; 608 NW2d 502 (2000), and there is nothing in the record to support defendant's claim. Second, to establish ineffective assistance of counsel, defendant must show a prejudicial error by counsel, *People v Avant*, 235 Mich App 499, 507; 597 NW2d 864 (1999), and defendant has not established that the trial court erred in denying his motion to suppress. Cf. *People v Hadley*, 199 Mich App 96, 100-101; 501 NW2d 219 (1993), aff'd on other grounds sub nom *People v Morris*, 450 Mich 316 (1995).

Affirmed.

/s/ Helene N. White

/s/ Michael J. Talbot

/s/ Edward R. Post

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