

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

RICKI KEVIN MOORE,

Defendant-Appellant.

UNPUBLISHED

July 12, 2002

No. 235616

Macomb Circuit Court

LC No. 99-002347-FH

00-000234-FC

Before: Hood, P.J., and Saad and E. M. Thomas*, JJ.

PER CURIAM.

Defendant pleaded guilty to first-degree criminal sexual conduct (CSC), MCL 750.520b(1)(f), and felonious assault, MCL 750.82, for which he was sentenced to prison terms of one to thirty years' and one to four years', respectively. The trial court denied his motion to withdraw his pleas. Defendant now appeals by delayed leave granted and we affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

A guilty plea must be understanding, voluntary, and accurate. MCR 6.302(A). It is understanding if the defendant is advised of and understands the rights set forth in MCR 6.302(B). It is voluntary if the terms of any plea agreement are disclosed and the plea is defendant's own choice, i.e., it is not tendered under threat or duress. MCR 6.302(C). It is accurate if the defendant admits facts to support a finding that he is guilty of the offense charged. MCR 6.302(D)(1). A motion to withdraw a guilty plea after sentencing is a matter within the trial court's discretion. *People v Davidovich*, 238 Mich App 422, 425; 606 NW2d 387 (1999), aff'd 463 Mich 446 (2000). Such a motion "must be made based on a showing of miscarriage of justice." *People v Ward*, 459 Mich 602, 614; 594 NW2d 47 (1999). This Court "will not disturb the trial court's decision unless the court clearly abused its discretion, resulting in a miscarriage of justice." *Davidovich*, *supra*.

While a guilty plea must be made "with knowledge of the consequences," *People v Schluter*, 204 Mich App 60, 66; 514 NW2d 489 (1994), lv den 445 Mich 938 (1994), "the trial judge need not inform the defendant of all sentence consequences—only the maximum sentence for the crime to which he was pleading guilty," *People v Jahner*, 433 Mich 490, 502; 446 NW2d 490 (1989), and any mandatory minimum sentence required by law. MCR 6.302(B)(2). The

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

failure to advise a defendant of the maximum sentence or an applicable mandatory minimum sentence requires reversal. *Guilty Plea Cases*, 395 Mich 96, 118; 235 NW2d 132 (1975).

The trial court did not fail to advise defendant of the minimum sentence for first-degree CSC but erroneously advised him that it carried a mandatory minimum sentence of one year. This error does not come within the rule in *Guilty Plea Cases* necessitating reversal. Cf. *People v Shannon*, 134 Mich App 35, 37; 349 NW2d 813 (1984). Because defendant's plea included a sentence bargain and defendant was sentenced in accordance with that bargain, reversal is not required. *People v Jackson*, 417 Mich 243, 246; 334 NW2d 371 (1983).

"In reviewing the adequacy of the factual basis for a plea, this Court examines whether the factfinder could properly convict on the facts elicited from the defendant at the plea proceeding." *People v Brownfield (After Remand)*, 216 Mich App 429, 431; 548 NW2d 248 (1996).

A factual basis to support a plea exists if an inculpatory inference can be drawn from what the defendant has admitted. This holds true even if an exculpatory inference could also be drawn and the defendant asserts that the latter is the correct inference. Even if the defendant denies an element of the crime, the court may properly accept the plea if an inculpatory inference can still be drawn from what the defendant says. [*People v Jones*, 190 Mich App 509, 511-512; 476 NW2d 646 (1991) (citations omitted).]

Defendant pleaded guilty to first-degree CSC predicated on anal intercourse. The elements of the crime are (1) that defendant engaged in sexual penetration with another person, (2) that defendant used force or coercion to accomplish the penetration, and (3) that defendant caused personal injury to the victim. MCL 750.520b(1)(f). Defendant contends that his admissions were insufficient to establish the first two elements.

In establishing a factual basis for his plea, defendant admitted that he had sex with the victim, that the sex was nonconsensual, and that the victim was injured. The phrase "have sex" means "to engage in sexual intercourse." *Random House Webster's College Dictionary* (1997). Because an inculpatory inference of penetration can reasonably be drawn from defendant's admission that he had sex with the victim, his admission is sufficient to establish the first element of the crime. Defendant said that the sex was nonconsensual, i.e., the victim did not agree to engage in the sexual act. If defendant were to accomplish anal penetration with an unwilling partner, he would at the very least have to maneuver the victim into position, which would constitute the use of force or coercion. MCL 750.520b(1)(f)(i); *People v Premo*, 213 Mich App 406, 409-411; 540 NW2d 715 (1995). Because an inculpatory inference of force or coercion can reasonably be drawn from defendant's admission that the sex was not consensual, his admission is sufficient to establish the second element of the crime.

We find that the trial court did not abuse its discretion in denying defendant's motion to withdraw his guilty plea to first-degree CSC. Because defendant never challenged the

proceedings as they related to his guilty plea to felonious assault, we find that the trial court did not abuse its discretion in denying his motion to withdraw that plea.

Affirmed.

/s/ Harold Hood
/s/ Henry William Saad
/s/ Edward M. Thomas