

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DANA DARNELL COOPER,

Defendant-Appellant.

UNPUBLISHED

November 14, 2006

No. 264715

Genesee Circuit Court

LC No. 04-014565-FC

Before: Fort Hood, P.J., and Murray and Donofrio, JJ.

PER CURIAM.

Defendant pleaded no contest to unarmed robbery, MCL 750.530, and felon in possession of a firearm, MCL 750.224f. The trial court sentenced defendant as a third habitual offender, MCL 769.11, to concurrent terms of 8 to 30 years in prison for unarmed robbery, and 43 months to 10 years for felon in possession. He appeals by delayed leave granted. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant argues that the trial court abused its discretion by denying his motion to withdraw his no contest plea. He maintains that he was under the misapprehension that the sentence range presented to him for his robbery offense¹ represented his expected sentence. He expected that his minimum sentence would be near the low end of the guidelines while his maximum sentence would be near the high end of the guidelines. Therefore, defendant argues, his pleas were involuntarily given.

Defendant argues that the trial court erred when it refused to allow him to withdraw his plea. A trial court's denial of a defendant's motion to withdraw a guilty plea is reviewed for an abuse of discretion. *People v Harris*, 224 Mich App 130, 131; 568 NW2d 149 (1997).

There is no absolute right to withdraw an accepted guilty plea. *People v Gomer*, 206 Mich App 55, 56; 520 NW2d 360 (1994). Courts may permit a guilty plea to be withdrawn in the interest of justice before sentencing unless withdrawal of the plea would substantially

¹ The range presented during defendant's plea proceeding was 43 to 129 months. The amended range presented during sentencing was 50 to 150 months. Defendant's minimum sentence fell within both ranges.

prejudice the prosecutor's ability to prosecute the defendant because of the prosecutor's reliance on the plea. MCR 6.310(B)(2). In the absence of a procedural error in receiving the plea, a defendant must establish a fair and just reason for withdrawal of the plea. *Harris, supra* at 131; *People v Jackson*, 203 Mich App 607, 611; 513 NW2d 206 (1994). Examples of fair and just reasons for withdrawal include when the plea was the product of fraud, duress or coercion, *Gomer, supra* at 58, when the plea involved erroneous legal advice coupled with actual prejudice to legal rights, *People v Jackson*, 417 Mich 243; 334 NW2d 371 (1983); *People v Shannon*, 134 Mich App 35, 38; 349 NW2d 813 (1984), or if the bargain on which the plea was based was illusory, i.e., that the defendant received no benefit from the bargain, *Harris, supra* at 132. If the facts of the case indicate that the plea was voluntary, it will be upheld regardless whether the defendant received consideration in return. *Id.* This Court has held that "requests to withdraw pleas are generally regarded as frivolous where the circumstances indicate that the defendant's true motivation for moving to withdraw is a concern regarding sentencing." *People v Haynes*, 221 Mich App 551, 559; 562 NW2d 241 (1997), citing *People v Holmes*, 181 Mich App 488, 492; 449 NW2d 917 (1989). However, MCR 6.310(B)(2)(b) provides that a defendant is entitled to withdraw the plea if the trial court states that it will sentence defendant to a specified term or within a specified range, and then finds that it is unable to do so.

We find defendant's claim that he misunderstood the sentencing component of his bargain² contradicted by the record. Defendant repeatedly acknowledged that his maximum possible sentence would be 30 years for unarmed robbery due to his status as a habitual offender. Nor do his other acknowledgements during the plea proceeding support his assertion. Defendant specifically requested a promise that he would be sentenced within the "low end of the sentencing guidelines." The trial court informed defendant that it would not promise such a result, but pledged to sentence defendant to a minimum term that would be an "improvement" on the nine-year minimum he had been previously offered by the prosecutor. Defendant subsequently declined the trial court's offer to discuss the matter again with his attorney and accepted the plea.

Nor can defendant show that he did not get the benefit of the trial court's pledge to sentence him to less than the initial offer of nine years. Even apart from the benefit he received by the dismissal of the felony-firearm charge, defendant received a tangible benefit from the decision to plead. He cannot show that the basis for the plea was illusory.

Because defendant did not establish "a fair and just reason for withdrawal" of the plea, the trial court did not abuse its discretion in denying defendant's motion to withdraw his no contest plea.

² Defendant also received the dismissal of additional charges, including possession of a firearm during the commission of a felony, MCL 750.227b, in return for his plea and a promise to provide testimony in unrelated homicide cases.

Affirmed.

/s/ Karen M. Fort Hood

/s/ Christopher M. Murray

/s/ Pat M. Donofrio