

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

STEVEN ANTHONY RODRIGUEZ,

Defendant-Appellant.

UNPUBLISHED

October 23, 2008

No. 281133

Wayne Circuit Court

LC No. 06-007343-01

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

PER CURIAM.

Defendant pleaded guilty to second-degree murder, MCL 750.317, and received a sentence of 20 to 40 years' imprisonment. Defendant appeals from his conviction and sentence by delayed leave granted. We affirm.

This case arises from the violent death of a 19-year-old man, whose body the police found in a creek, showing severe head trauma. Defendant, who then was 15 years old, was charged with first-degree murder in the matter, but agreed to plead guilty to second-degree murder, and with that the sentence of twenty to forty year's imprisonment, in order to avoid the consequences of first-degree murder. At the plea proceeding, defendant admitted causing the victim's death by striking him repeatedly on the head, and that he then put the body in the creek and fled the scene.

On appeal, defendant argues that he suffered ineffective assistance of counsel because defense counsel did not contest the voluntariness of a statement defendant had offered to the police, and did not attempt to negotiate for an amended charge that would have allowed for a blended juvenile sentence. Defendant additionally argues that the prosecution abused its discretion by failing to take such initiative on its own, and that the sentence was rendered invalid by certain mitigating facts.

Plaintiff argues that defendant has waived his claims of ineffective assistance of counsel by pleading guilty. We agree.

Criminal defendants pleading guilty thereby waive their rights to "raise as error on appeal the denial of a motion to suppress evidence . . ." *People v New*, 427 Mich 482, 485; 398 NW2d 358 (1986). Instead, such defendants "may raise on appeal only those defenses and rights which would preclude the state from obtaining a valid conviction against the defendant." *Id.* at 491.

Our Supreme Court elaborated, “Such rights and defenses reach beyond the factual determination of defendant’s guilt and implicate the very *authority* of the state to bring a defendant to trial.” *Id.* (emphasis retained, internal quotations marks and citation omitted).¹ Further, “[w]here the alleged deficient actions of defense counsel relate to issues that are waived by a valid unconditional guilty plea, the claim of ineffective assistance of counsel relating to those actions is also waived.” *People v Scott*, 275 Mich App 521, 525-526; 739 NW2d 702 (2007), quoting *People v Vonins (After Remand)*, 203 Mich App 173, 176; 511 NW2d 706 (1993).

Likewise the challenge to the sentencing aspect of the plea agreement is also waived. In this case, defendant expressly accepted his sentence of 20 to 40 years’ imprisonment as part of the deal, and the trial court advised him that that sentence was indeed a firm part of the “contract” which would spare him possible conviction of, and the sentence for, first-degree murder. Further, the trial court indicated that the parties endured vexing negotiations to arrive at that offer. The possibility that the prosecution might have been persuaded to proceed with juvenile proceedings instead of a criminal trial, and thus bring to bear the sentencing options attendant to juvenile adjudications, is without merit under the circumstances.

The prosecutor has wide discretion in deciding whether to try a juvenile charged with murder as an adult. See MCL 764.1f; MCL 712A.2d(1); *People v Abraham*, 256 Mich App 265, 282-283; 662 NW2d 836 (2003). A juvenile convicted of second-degree murder must be sentenced as an adult. MCL 769.1(1)(h). The penalty for second-degree murder is life or any term of years. MCL 750.317. Because defendant’s sentence was part of a plea bargain, and was authorized by law, that sentence is unassailable on appeal. Thus, the claims of ineffective assistance of counsel or abuse of prosecutorial discretion predicated on it also fail.

Because defendant’s plea-based conviction and sentence were legally valid, his plea waived issues relating to evidence, his prospects for more lenient terms, the machinations of the prosecutor, or defense counsel’s performance in connection with those things. See *Scott, supra*; *New, supra*.

Affirmed.

/s/ Deborah A. Servitto

/s/ Pat M. Donofrio

/s/ Karen M. Fort Hood

¹ The exception is the “conditional plea of guilty, nolo contendere, guilty but mentally ill, or not guilty by reason of insanity,” where a defendant, as part of the plea agreement, reserves the right to appeal specified pretrial rulings. MCR 6.301(C)(2). See also *New, supra* at 490-491. However, “The ruling or rulings as to which the defendant reserves the right to appeal must be specified orally on the record or in a writing made a part of the record.” MCR 6.301(C)(2). No such record exists in this case, and defendant does not suggest that there were any conditions.