

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

V

OLIVER WOODS,

Defendant-Appellant.

UNPUBLISHED

January 20, 2011

No. 295014

Wayne Circuit Court

LC No. 08-014172-FH

Before: O'CONNELL, P.J., and SAAD and BECKERING, JJ.

PER CURIAM.

Defendant appeals by delayed leave granted his plea-based conviction of possession of heroin less than 25 grams in violation of MCL 333.7403(2)(a)(v). We affirm. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

Defendant was arrested for possession of heroin. He agreed to plead guilty in return for dismissal of a concurrent fourth habitual offender charge and a sentence agreement of six months to four years. Defendant was advised of his rights before providing the following factual basis for his guilty plea:

THE COURT: With that, Ms. Grier (prosecutor), please establish date, time and place.

MS. GRIER: October 14th, 2008, in front of 20191 Lesure, City of Detroit, County of Wayne.

THE COURT: Mr. Woods, over here on the west side, date and time stated, you were retained (sic) by the City of Detroit Police Officer and found to have in your possession a small clear plastic baggy, small wraps of suspected heroin, is that right?

THE DEFENDANT: Yes.

THE COURT: Counsel, will you stipulate that the total weight of this heroin is clearly less than twenty-five grams?

MR. PARKER (defense attorney): So stipulated, Judge.

THE COURT: All right. One charge only of simple possession, less than twenty-five grams of heroin, no sale or delivery, or transaction, how do you plead?

THE DEFENDANT: Guilty.

THE COURT: How do you plead, sir?

THE DEFENDANT: Guilty.

THE COURT: All right. I will accept the plea. We have an agreement first to withdraw the habitual fourth penalty. We will be sentencing the defendant to just six months to four years in the Michigan Department of Corrections. People and defense are we satisfied?

MS. GRIER: Satisfied.

THE COURT: Defense satisfied, Mr. Parker?

MR. PARKER: Yes, Judge, satisfied.

The trial court accepted defendant's guilty plea.

At sentencing, the trial court noted that it had received a handwritten letter from defendant seeking to withdraw his plea. Defense counsel stated that he had discussed the matter with defendant and that, against the advice of counsel, defendant was moving to withdraw his plea. In his letter, defendant asserted that he was not aware of the elements of the offense at the time he entered his plea. He maintained that he did not know what was wrapped in the tin foil packs in the plastic baggie. He claimed that he simply picked up the baggie as he stood in front of his house, and that he intended to throw it in the trash can, but was arrested before he could do so. Finding that defendant made no claim of innocence, the trial court stated that it would deny the motion without prejudice. The trial court sentenced defendant pursuant to the agreement.

On appeal, defendant argues that his guilty plea was invalid because the court did not properly establish the factual basis for the plea. An element of the crime charged was that defendant knowingly or intentionally possessed the contraband. During the plea hearing, defendant never expressed that he had knowledge, before the police told him, that he was in possession of heroin. He argues that because this element of knowledge was not established, he should be allowed 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). An abuse of discretion occurs when the trial court's decision falls outside a range of principled outcomes. See *People v Babcock*, 469 Mich 247, 269; 666 NW2d 231 (2003).

Once a guilty plea or a plea of nolo contendere has been accepted by the trial court, the defendant has no absolute right to withdraw it. *People v Eloby (After Remand)*, 215 Mich App 472, 474-475; 547 NW2d 48 (1996); *People v Gomer*, 206 Mich App 55, 56; 520 NW2d 360

(1994). A court may permit a plea to be withdrawn in the interest of justice before sentencing unless withdrawal of the plea would substantially prejudice the ability to prosecute the defendant because of the prosecutor's reliance on the plea. MCR 6.310(B)(1). 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*, 224 Mich App at 131; *People v Jackson*, 203 Mich App 607, 611; 513 NW2d 206 (1994).

When determining whether the trial court has established a factual basis for the plea, this Court reviews the record to determine "whether the trier of fact could properly convict on the facts as stated by the defendant." *People v White*, 411 Mich 366, 381-382; 308 NW2d 128 (1981), quoting *Guilty Plea Cases*, 395 Mich 96, 128-132; 235 NW2d 132 (1975), and *People v Haack*, 396 Mich 367, 376-377; 240 NW2d 704 (1976).

In order to support defendant's conviction for possession of less than 25 grams of heroin, the prosecution had to prove that: (1) the defendant possessed a controlled substance, (2) the substance possessed was heroin, (3) the defendant knew he was possessing heroin, and (4) the substance was in a mixture that weighed less than 25 grams. MCL 333.7403(2)(a)(v); see also *People v Wolfe*, 440 Mich 508, 516-517; 489 NW2d 748, amended 441 Mich 1201 (1992).

Defendant only challenges the third element, i.e. that he knowingly possessed the heroin. Defendant wrongly contends that, while circumstantial evidence may be used to establish possession, the prosecution was required to present direct evidence that defendant knew he possessed heroin to support the plea. In *Guilty Plea Cases*, 395 Mich at 130, the Court stated:

A factual basis for acceptance of a plea exists if an inculpatory inference can reasonably be drawn by a jury from the facts admitted by the defendant even if an exculpatory inference could also be drawn and defendant asserts the latter is the correct inference.

Similarly, circumstantial evidence, and the inferences that arise therefrom, may properly constitute proof of knowing possession. *Wolfe*, 440 Mich at 526; *People v McGhee*, 268 Mich App 600, 623; 709 NW2d 595 (2005). Moreover, "[b]ecause it is difficult to prove an actor's state of mind, only minimal circumstantial evidence is required." *McGhee*, 268 Mich App at 623, citing *People v McRunels*, 237 Mich App 168, 181; 603 NW2d 95 (1999). Here, the facts established in the record show that defendant was arrested with a plastic bag containing smaller wraps of heroin in his pocket, and that the total amount of the heroin was less than 25 grams.¹ The odd packaging of the heroin supports a finding that defendant knew the plastic bag contained something other than ordinary garbage. Possession was also established by evidence that defendant was observed in plain view with dominion and control of the bag containing the heroin. A reasonable inculpatory reference can be drawn from these facts that defendant knew

¹ In his motion to withdraw his guilty plea, defendant acknowledged that when the police searched him, "the officer found a plastic bag containing 'tin foil' packs in defendant [sic] left pants pocket which was later tested and found to contain heroin."

that the substance he possessed was heroin. Thus, regardless of whether a jury could also draw an exculpatory inference, defendant's plea was supported by an adequate factual basis.

Affirmed.

/s/ Peter D. O'Connell
/s/ Henry William Saad
/s/ Jane M. Beckering