

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JOSEPH GEORGE MORROW,

Defendant-Appellant.

UNPUBLISHED

February 22, 2011

No. 296053

Kent Circuit Court

LC No. 08-011623-FH

Before: SAAD, P.J., and K. F. KELLY and DONOFRIO, JJ.

MEMORANDUM.

Defendant appeals by delayed leave granted his plea-based conviction of using the internet to communicate with a minor for the purpose of child sexually abusive activity, MCL 750.145d(2)(f). Because defendant unconditionally pleaded guilty to the instant crime in exchange for dismissal of other charges, the plea constitutes a waiver of the presented issue and, we affirm. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

Defendant admitted that he was used the internet to communicate with a person using the screen name of “cosmic-nothingness.” He acknowledged believing that this person was 14 years old. Further, he admitted that he arranged to meet with her for the purpose of engaging in sexual activity, and that he appeared at a Grand Rapids address for this purpose.

Defendant argues that the trial court erred in denying his motion to dismiss a charge brought pursuant to MCL 750.145c, as well as the charge to which he pleaded guilty. He claims that the intended victim of his crime had to be an actual minor and that he was entitled to assert a statutory affirmative defense because she was in fact an emancipated minor. However, defendant entered an unconditional plea. In *People v New*, 427 Mich 482, 491-493; 398 NW2d 358 (1986), our Supreme Court clarified the rights that are waived by a guilty plea and a plea of nolo contendere. Quoting *People v White*, 411 Mich 366, 397-399; 308 NW2d 128 (1981)] (Moody, J., concurring in part and dissenting in part), the *New* Court stated:

Only those rights and defenses which reach beyond the factual determination of defendant’s guilt and implicate the very authority of the state to bring a defendant to trial are preserved. Examples include: the prohibition against double jeopardy, . . . ; the right to challenge the constitutionality of the statute under which one is charged, . . . ; the challenge that a charge is brought under an inapplicable statute, . . . These defenses are “similar to the jurisdictional defenses,” . . . in that they

involve the right of the government to prosecute the defendant in the first place. Such rights may never be waived.

In contrast, those rights which are subsumed in a guilty plea relate to a different aspect of governmental conduct in the criminal process. When a defendant pleads guilty, he waives his right to a trial. Therefore, he necessarily gives up all the rights and challenges associated with that trial. Thus, important safeguards relating to the *capacity* of the state to prove defendant's factual guilt, and those regulating the prosecution's conduct at trial are among those defendant waives when he pleads guilty. These rights, which essentially relate to the gathering and presentation of evidence, are lost even if a successful challenge would provide a "complete defense" by in effect rendering the state unable to continue with the prosecution. [*New*, 427 Mich at 492-493, quoting *White*, 411 Mich 397-399..]

Even if defendant's affirmative defense would have provided a complete defense, an issue which we neither address nor decide, his argument pertains to the prosecutor's ability to prove the case against him. Therefore, he waived the issue by pleading guilty. *Id.*

Affirmed.

/s/ Henry William Saad
/s/ Kirsten Frank Kelly
/s/ Pat M. Donofrio