

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

CHRISTOPHER BLAYNE KIYOSHK,

Defendant-Appellant.

UNPUBLISHED

June 2, 2011

No. 295552

Kalamazoo Circuit Court

LC No. 06-001463-FJ

Before: SHAPIRO, P.J., and FITZGERALD and BORRELLO, JJ.

PER CURIAM.

Pursuant to a plea agreement, defendant pleaded guilty to one count of first-degree criminal sexual conduct (CSC-I), MCL 750.520b(1)(a). Defendant now appeals by leave granted from the circuit court's order denying his motion for relief from judgment on the grounds that the circuit court lacked jurisdiction to accept his guilty plea. We reverse the trial court's denial, vacate defendant's plea, and remand for additional proceedings consistent with this opinion.

I. BACKGROUND

Defendant was born on December 24, 1985 and reached 14 years of age on December 24, 1999. In 2006, defendant was charged as an adult with four counts of CSC-I (victim under 13), involving his young cousin.¹ Count I alleged fellatio occurring in 1999; Count II alleged sexual intercourse occurring in 1999; Count III alleged sexual intercourse occurring in 2000; and Count IV alleged cunnilingus occurring in 2000. Defendant elected to plead guilty to count II, in exchange for which the prosecutor agreed to: 1) dismiss the three additional counts of CSC-I; 2) recommend a sentence of 5 to 25 years' imprisonment; and 3) permit defendant to argue for a sentence below the recommended sentence if the judge scored the guidelines in a manner that produced a guidelines recommendation lower than the one calculated by the prosecutor. At the September 14, 2006 plea proceeding, the factual basis to support defendant's plea was established through the following exchange:

¹ She was apparently eight years old at the time of the first incident, making her nine or 10 by the time of the last.

The Court: During the period of time not otherwise described except as being in 1999 in the city and county of Kalamazoo, did you have sexual intercourse with [the victim], who at the time was under the age of 13?

Defendant: Yes.

The court accepted defendant's plea and sentenced defendant to five to 25 years' imprisonment, consistent with the prosecutor's recommendation.

Defendant did not seek a direct appeal, but in August 2009, he moved for relief from judgment under MCR 6.500 *et seq*, arguing that the circuit court lacked jurisdiction to hear and decide his case on the ground that he was 13 years old when he committed the crime to which he pleaded guilty, such that jurisdiction over the matter vested solely within the juvenile division of the circuit court.² Defendant also asserted ineffective assistance of counsel for failure to challenge the circuit court's lack of jurisdiction to entertain defendant's criminal prosecution.

The trial court denied the motion, finding that defendant "waived any claim this Court lacked jurisdiction when he entered into an unconditional guilty plea." It further determined that the circuit court did, in fact, have jurisdiction to entertain defendant's criminal prosecution because, although defendant was a minor at the time of the crime, he was an adult at the time of his arrest and guilty plea. Finally, the trial court found that defendant had waived any claim of ineffective assistance of counsel by entering into the unconditional plea. Defendant then filed an application for leave to appeal with this Court, which was granted. *People v Kiyoshk*, unpublished order of the Court of Appeals, issued January 27, 2010 (Docket No. 295552).

II. ANALYSIS

A. STANDARD OF REVIEW

We review a trial court's decision whether to grant a motion for relief from judgment for an abuse of discretion. *People v Clark*, 274 Mich App 248, 251; 732 NW2d 605 (2007). However, whether a court has jurisdiction is a question of law, which we review de novo. *Etefia v Credit Technologies, Inc*, 245 Mich App 466, 472; 628 NW2d 577 (2001). In addition, this case involves the interpretation and application of statutes, which are also question of law subject to de novo review. *Mason v City of Menominee*, 282 Mich App 525, 527-528; 766 NW2d 888 (2009).

B. RELIEF FROM JUDGMENT

² Although defendant refers to the juvenile division of the probate court, under the current statutory scheme, the alternative to ordinary adult proceedings for juvenile offenders is the family division of the circuit court. See MCL 712A.2(a)(1); *Woodman v Kera LLC*, 486 Mich 228, 282 n 23; 785 NW2d 1 (2010).

A defendant seeking relief from judgment bears the burden of establishing entitlement to the relief requested. MCR 6.508(D). Grounds for granting such a motion include jurisdictional defects. MCR 6.508(D)(3).

Criminal defendants pleading guilty “may raise on appeal only those defenses and rights which would preclude the state from obtaining a valid conviction against the defendant.” *People v New*, 427 Mich 482, 491; 398 NW2d 358 (1986). Our Supreme Court in *New* 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 quotation marks and citation omitted). The Court reiterated, “where the defense or right asserted by defendant relates solely to the capacity of the state to prove defendant’s factual guilt, it is subsumed by defendant’s guilty plea.” *Id.*

Defendant’s jurisdictional argument, which challenges the authority of the circuit court to hear and decide his underlying criminal case, thereby invokes one of the legitimate grounds for granting a motion for relief from judgment.

C. JURISDICTION

1. LEGAL AUTHORITY

MCL 712A.2(a) grants the family division of the circuit court “[e]xclusive original jurisdiction superior to and regardless of the jurisdiction of another court in proceedings concerning a juvenile under 17 years of age” Subsection (a)(1) provides that the court “has jurisdiction over a juvenile 14 years of age or older who is charged with a specified juvenile violation only if the prosecuting attorney files a petition in the court instead of authorizing a complaint and warrant,” and CSC-I is one of the offenses included in the definition of a “specified juvenile violation.” MCL 712A.2(a)(1)(A).

In addition, MCL 764.1f(1), the automatic waiver rule, authorizes a prosecutor to commence a felony prosecution in the circuit court against a defendant who is 14 years old if the charged offense is a “specified juvenile violation.” MCL 764.1f(2)(a) again lists CSC-I among those offenses designated a “specified juvenile violation.” Likewise, MCL 600.606(1) states that “the circuit court has jurisdiction to hear and determine a specified juvenile violation is committed by a juvenile 14 years of age or older and less than 17 years of age,” with subsection (2)(a) listing CSC-I among the specified juvenile violations.

Finally, defendant’s age at the time of the commission of the offence controls whether jurisdiction vests in connection with adult or juvenile proceedings. See *People v Schneider*, 119 Mich App 480, 486; 326 NW2d 416 (1982).

Thus, taking these statutes in conjunction with caselaw, the circuit court properly had jurisdiction if defendant was 14 years old when he committed the instant offenses.

2. EVALUATING THE COUNTS

There is no question, based on the record, that defendant had achieved 14 years of age by 2000, when counts III and IV were alleged to have been committed. Thus, the circuit court

properly had jurisdiction over those offenses. Counts I and II, however, are both listed as generally having occurred in 1999, during which there were only eight days that defendant was 14 years old. Although there was information to suggest an incident that occurred on New Year's Eve, when defendant would have been 14 years old, nothing in that recitation of facts indicates that sexual intercourse took place. The only reference to sexual intercourse occurring in 1999 referenced a date in July. In addition, at the time of the plea taking, defendant did not admit that he was 14 years old at the time of the offense. Because count II alleged sexual intercourse, and the only facts in the record indicate that the only sexual intercourse that occurred in 1999 happened in July, defendant appears to have been 13 years old at the time of the incident to which he pleaded guilty.

Accordingly, we agree with defendant that the circuit court was without jurisdiction to take his guilty plea as to count II and vacate his plea.³ However, counts III and IV clearly arose after defendant turned 14, giving the circuit court jurisdiction over those counts. Therefore, they may be reinstated on remand. MCR 6.312 ("If a plea is . . . vacated by . . . an appellate court, the case may proceed to trial on any charges that had been brought or that could have been brought against the defendant if the plea had not been entered."); see also *People v Maxson*, 482 Mich 385, 395 n 7; 759 NW2d 817 (2008). Should the prosecutor seek to reinstate count I, the circuit court needs to make a factual determination as to defendant's age at the time the actions alleged in that count took place. If defendant is determined to have been less than 14 years old at the time of count I, that count shall be dismissed, because family court jurisdiction over defendant's actions ended when he reached 21. MCL 712A.2a(2). If defendant is determined to have been 14 years old at the time of count I, pursuant to MCR 6.312, this case may proceed to trial on counts I as well as III, and IV.

III. CONCLUSION

We reverse the trial court's denial of defendant's motion for relief from judgment, vacate defendant's plea, and remand for additional proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Douglas B. Shapiro
/s/ E. Thomas Fitzgerald
/s/ Stephen L. Borrello

³ In light of our vacation of defendant's plea, we need not consider his argument regarding ineffective assistance of counsel. Nevertheless, we note that by seeking to vacate his plea, defendant has opened himself up to reinstatement of the multiple other charges that were dismissed. Accordingly, even though the circuit court was, in fact, without jurisdiction over the count to which defendant pleaded guilty, that fact does not automatically render defendant's counsel's performance ineffective.