

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

PERRY BODDY,

Defendant-Appellant.

UNPUBLISHED

April 26, 1996

No. 185259

LC No. 94-013256

Before: Griffin, P.J., and Smolenski and L. P. Borrello,* JJ.

PER CURIAM.

Pursuant to a plea agreement, defendant pleaded guilty to two counts of armed robbery, MCL 750.529; MSA 28.797, and one count of the possession of a firearm during the commission of a felony, MCL 750.227b; MSA 28.424(2). Defendant was sentenced to seventeen to thirty years' imprisonment for each armed robbery conviction. These concurrent sentences are consecutive to a mandatory two year sentence for the felony-firearm conviction. Defendant appeals as of right. We affirm.

During his plea hearing, defendant stated that he had received no threats, influence, or promises aside from the plea agreement. However, defendant now claims that the trial court abused its discretion by denying his post-sentence motion to withdraw his guilty plea without first ordering an evidentiary hearing to assess the voluntariness of his plea. In support of this argument, defendant contends that his plea was made while under the impression that the guidelines' range for his offense would be lower than what the trial court announced at sentencing.

We conclude that defendant waived this claim when he tendered his unconditional guilty plea. MCR 6.302(B)(4); see also *People v Sledge*, 444 Mich 863; 509 NW2d 153 (1993) (holding that *People v Sledge (On Rehearing)*, 200 Mich App 326; 503 NW2d 672 (1993) has "no precedential

*Circuit judge, sitting on the Court of Appeals by assignment.

force or effect"). Therefore, because defendant has alleged no viable error in the plea proceeding, we conclude that the trial court did not abuse its discretion in denying defendant's post-sentence motion to withdraw his plea of guilty. MCR 6.311; see generally *People v Effinger*, 212 Mich App 67, 69; 436 NW2d 809 (1995); *People v Montrose (After Remand)*, 201 Mich App 378, 380; 506 NW2d 565 (1993); cf. *People v Holmes*, 181 Mich App 488, 494; 449 NW2d 917 (1989).

Defendant further asserts that he was denied the effective assistance of counsel. However, there was no evidentiary hearing on this issue below. Therefore, appellate review is limited to the record. *People v Barclay*, 208 Mich App 670, 672; 528 NW2d 842 (1995). After a thorough review of the record, we conclude that defendant has neither sustained his burden of proving that counsel made a serious error that affected the result of trial nor overcome the presumption that counsel's actions were strategic. *People v LaVearn*, 448 Mich 207, 213; 528 NW2d 721 (1995); *People v Stanaway*, 446 Mich 643, 666, 687-688; 521 NW2d 557 (1994).

Finally, defendant argues that his sentence is disproportionate. However, defendant's sentence is within the sentencing guidelines' range and is therefore presumptively proportionate. *People v Broden*, 428 Mich 343, 354-355; 408 NW2d 798 (1987); *People v Cutchall*, 200 Mich App 396, 410; 504 NW2d 666 (1993). Defendant has failed to rebut the presumption of proportionality.

Affirmed.

/s/ Richard Allen Griffin
/s/ Michael R. Smolenski
/s/ Leopold P. Borrello