STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

TYRONE TYNER,

Defendant-Appellant.

UNPUBLISHED
May 7, 1996

No. 183150
LC No. 94-0134-FH

Before: MacKenzie, P.J., and Saad and C. F. Youngblood,*

PER CURIAM.

Defendant pleaded guilty to possession with intent to deliver a controlled substance under fifty grams, MCL 333.7401(2)(a)(iv); MSA 14.15 (7401)(2)(a)(iv), and to habitual fourth felony offense, MCL 769.12; MSA 28.1084, under a plea agreement in which the prosecution recommended a sentencing cap of five and a half years. Defendant was ultimately sentenced to five and a half to thirty years. He now appeals, asking this Court to remand for a hearing on whether his plea was "knowingly" made. We deny the request to remand, and affirm the lower court sentence.

On August 25, 1994, defendant appeared before the sentencing judge, at which time the judge determined that defendant was competent to stand trial. In reaching this determination, the court relied upon an August 22, 1994, letter from a psychologist at the Center for Forensic Psychiatry, which letter was read into the record. The psychologist's conclusions were based upon her two and a half hour interview with defendant, as well on as certain psychological tests administered to defendant after that time. The psychologist concluded that defendant was a disingenuous, manipulative person who was attempting to misrepresent both his cognitive and emotional function. The psychologist's conclusions were amply supported by specific details.

Following the court's determination that defendant was competent, defendant pleaded guilty to the above charges (on August 25, 1994). As part of the plea taking, the court asked certain questions of defendant, including whether he was taking medication. Defendant acknowledged that he was on one medication, but stated that it did not affect his ability to understand what was taking place. In

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

response to the court's further questioning, defendant stated that he specifically understood what was taking place, and that he did want to plead guilty to the charges.

Nearly two months later, on October 17, 1994, when defendant appeared for sentencing, the lower court asked defendant if he still desired the court to accept his guilty pleas, and defendant responded affirmatively. Defendant was then sentenced to five and a half to thirty years in prison. Defendant did not file a motion to withdraw his pleas in the lower court, although he filed a timely notice of appeal in this Court.

On June 21, 1995, defendant filed a motion to remand in this Court, pursuant to MCR 7.211(C) (1)(a), for an evidentiary hearing on the issue of whether defendant "knowingly" pleaded guilty. In support of that motion, defendant attached two physician's certificates, which were not presented to the lower court. The certificates concluded, that, as of March 9, 1994, and March 10, 1994, respectively (some five months prior to the date defendant pleaded guilty), defendant suffered from "chronic paranoid schizophrenia." We note that each certificate stated that the doctor signing the certificate had examined defendant for a total of *twenty minutes* prior to reaching this conclusion. On October 9, 1995, this Court denied defendant's motion to remand, "for failure to persuade the Court of the necessity of a remand at this time." Defendant has since filed an appellate brief, again requesting remand for a hearing on the issue of whether his pleas were "knowingly" made.

As a threshold matter, there is no absolute right to withdrawal of a guilty plea after sentencing. *People v Effinger,* 212 Mich App 67, 69; 536 NW2d 809 (1995). When a motion to withdraw a guilty plea is made after sentencing, the decision whether to grant it rests within the sound discretion of the trial court. *Id.* However, because no motion to withdraw was ever filed in the trial court, we must resolve this issue de novo.

We are guided by *People v Smith*, 26 Mich App 260, 182 NW2d 31 (1970), where the issue was whether the lower court erred in accepting the defendant's guilty plea to breaking and entering, in light of certain information that the trial court had when it accepted the defendant's plea. In particular, the lower court had a psychiatric evaluation of the defendant, which concluded that defendant had a "sociopathic personality disturbance, anti-social reaction, with sexual deviation (rape) and was hostile, egocentric and assaultive," but was competent to stand trial. *Smith.*, 26 Mich App at 261; 182 NW2d 31. The defendant argued on appeal that the trial judge should have ascertained, through further psychiatric evaluation, whether the defendant's mental condition precluded a free, voluntary, knowing, and understanding guilty plea. This Court found no error:

> Here defendant was represented by counsel. There is no supporting affidavit showing the guilty plea to be the product of a personality disorder or other mental impairment. There is no showing that any of defendant's psychological disturbances relate to the breaking and entering charge; rather, the psychiatric report deals with defendant's propensity towards rape, and found him competent to stand trial. The trial judge examined the defendant at length regarding the facts surrounding the breaking and entering charge and concluded that the plea was made according to accepted standards. *Smith*, 26 Mich App at 262; 182 NW2d 31.

Applying similar analysis, defendant here was likewise represented by counsel. Further, there was no evidence at the plea taking, at sentencing, or before this Court, that defendant's guilty pleas resulted from a personality disorder or mental impairment. And, although defendant apparently assumes that the "schizophrenia" diagnosis itself should be sufficient to call into question whether the pleas were "knowing" – there is no evidence of a *connection* between the two. It is also significant that the sentencing judge examined defendant at length and concluded that his pleas were made according to accepted standards. The evidence reflects that defendant's pleas were made knowingly and we find and we find no error.

Affirmed.

/s/ Barbara B. MacKenzie
/s/ Henry William Saad
/s/ Carole F. Youngblood