

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ERIC ARTHUR SCHMELLING,

Defendant-Appellant.

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UNPUBLISHED

May 14, 1996

No. 169910

LC No. 93-007845-FH

Before: Kavanagh, T.G.,\* P.J., and R.B. Burns\*\* and G.S. Allen,\*\* JJ.

MEMORANDUM.

Defendant pleaded guilty of breaking and entering an occupied dwelling with intent to commit larceny, MCL 750.110; MSA 28.305, and habitual offender, second offense, MCL 769.10; MSA 28.1082. He was sentenced to 60 to 270 months' imprisonment, and now appeals as of right. We affirm. This case has been decided without oral argument pursuant to MCR 7.214(A).

There is no record support for defendant's claim that he was deprived of the effective assistance of counsel. *People v Wilson*, 196 Mich App 604, 612; 493 NW2d 471 (1992); *People v Dwayne Jackson*, 203 Mich App 607, 614; 513 NW2d 206 (1994). A remand for an evidentiary hearing is not available to defendant because a prior panel of this Court denied defendant's motion to remand on the merits and that decision is now the law of the case. *People v Hayden*, 132 Mich App 273, 297; 348 NW2d 672 (1984).

By entering into a plea agreement with a sentence recommendation, defendant has waived any issue regarding the trial court's exercise of its sentencing discretion. *People v Cobbs*, 443 Mich 276,

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\*Former Supreme Court Justice, sitting on the Court of Appeals by assignment pursuant to Administrative Order 1995-1.

\*\*Former Court of Appeals Judges, sitting on the Court of Appeals by assignment pursuant to Administrative Order 1995-1.

285 n 11; 505 NW2d 208 (1993); *People v Blount*, 197 Mich App 174, 175-176; 494 NW2d 829 (1992).

Affirmed.

/s/ Thomas G. Kavanagh  
/s/ Robert B. Burns  
/s/ Glenn S. Allen, Jr.