STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

THOMAS DARCY YOUNG,

Defendant-Appellant.

UNPUBLISHED
May 24, 1996

No. 135575
LC No. 89-095482-FH

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

PER CURIAM.

Defendant pleaded guilty to operating a chop shop, MCL 750.535a(2); MSA 28.803(1)(2), and nolo contendere to concealing or misrepresenting the identity of a motor vehicle, MCL 750.415(2); MSA 28.647(2). For those respective convictions, he was sentenced to concurrent terms of two to five years' imprisonent and two to four years' imprisonent. He appeals as of right. We affirm. This case has been decided without oral argument pursuant to MCR 7.214(E)(1)(b).

The trial court did not abuse its discretion in denying defendant's presentence motion to withdraw his guilty and nolo contendere pleas. *People v Spencer*, 192 Mich App 146, 150; 480 NW2d 308 (1991). Defendant's pleas were tendered on the day set for trial. See *People v Ruez*, 173 Mich App 534, 536; 434 NW2d 184 (1988). The record fails to disclose any error in the plea proceeding itself and the trial court expressly determined that defendant tendered his pleas freely, voluntarily, and understandingly. Also, defendant failed to offer any alternative explanation of the events in support of his subsequent general assertion of innocence; nor did he indicate in what manner the earlier factual recitations were erroneous. See *People v Scott*, 115 Mich App 273, 276-277; 320 NW2d 242 (1982). Defendant's general allegation of coercion was not supported by any allegations of

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fact and was also contrary to his on-the-record denial at the plea proceeding. See *People v Wier*, 111 Mich App 360, 361; 314 NW2d 621 (1981). Furthermore, the motion to withdraw was not filed until after the presentence report was prepared, thereby suggesting that the motion may have been motivated by a concern about sentencing. See *People v Holmes*, 181 Mich App 488, 492; 449 NW2d 917 (1989). In view of these circumstances, we find that defendant failed to demonstrate that the interest of justice would be served by allowing him to withdraw his guilty and nolo contendere pleas. MCR 6.310(B); *People v Gomer*, 206 Mich App 55; 520 NW2d 360 (1994).

The record indicates that defendant's conviction for operating a chop shop arose from the dismantling of a stolen Mustang automobile inside a garage owned by defendant, whereas the conviction for misrepresenting the identity of a motor vehicle arose from the act of restamping a false engine number on a Ford pick-up truck that was purportedly owned by defendant. Because the two convictions did not arise from the same criminal transaction, the double jeopardy prohibition against multiple punishment for the same offense was not violated. US Const, Am V; Const 1963, art 1, § 15; *People v Sturgis*, 427 Mich 392, 398-399; 397 NW2d 783 (1986); *People v Oxendine*, 201 Mich App 372; 506 NW2d 885 (1993).

Finally, defendant has failed to demonstrate that trial counsel was ineffective. *People v Pickens*, 446 Mich 298, 314; 521 NW2d 797 (1994); *People v Thew*, 201 Mich App 78, 89; 506 NW2d 547 (1993). Defendant's ineffective assistance of counsel claim is predicated upon trial counsel's alleged failure to challenge the constitutionality of the administrative inspections on various grounds. However, most of the grounds discussed by defendant are not meritorious, thus precluding a finding of ineffectiveness. *Kimmelman v Morrison*, 477 US 365, 375; 106 S Ct 2574; 91 L Ed 2d 305 (1986). Specifically, the constitutionality of the administrative inspections were not dependent upon the securement of an administrative warrant supported by a showing of probable cause of an existing statutory or regulatory violation. Rather, the statute pursuant to which the inspections were conducted, MCL 257.251(5); MSA 9.1951(5), authorizes warrantless inspections of automobile-junkyards. The constitutionality of such an inspection under this statute has been upheld by this Court under the pervasively regulated industry exception to the warrant requirement. *People v Barnes*, 146 Mich App 37; 379 NW2d 464 (1985). See also *New York v Burger*, 482 US 691; 107 S Ct 2636; 96 L Ed 2d 601 (1987) (upholding the constitutionality of a warrantless inspection of an automobile-junkyard under the pervasively regulated industry exception to the warrant requirement).

Defendant's reliance on *Marshall v Barlow's, Inc*, 436 US 307, 320; 98 S Ct 1816; 56 L Ed 2d 305 (1978), is misplaced. In that case, the pervasively regulated industry exception was found to be inapplicable because the statute in question was not limited to a single industry, nor was the business in question part of a pervasively regulated industry. Indeed, the Supreme Court in *Marshall* expressly noted that certain statutes, limited to certain pervasively regulated industries, permit warrantless inspections. *Id.*, 436 US 321.

Furthermore, the administrative inspections were not unconstitutional merely because they were conducted by police officers or because the officers may have been looking for evidence of criminality.

Burger, *supra*, 482 US 714-718. In any event, the record discloses that trial counsel did challenge the validity of the administrative searches on the basis that they were a "ruse" (i.e., a pretext) and, therefore, he cannot be considered ineffective on this basis.

The only potentially meritorious argument presented by defendant concerns the fact that the administrative inspections commenced before defendant or a representative arrived at the premises. See *Barnes*, *supra*, 45. However, the existence of a potentially meritorious argument, by itself, is insufficient to establish ineffective assistance of counsel. *McMann v Richardson*, 397 US 759; 90 S Ct 1441; 25 L Ed 2d 763 (1970). Rather, it was incumbent upon defendant to also show that his guilty and nolo contendere pleas were not voluntarily and intelligently made because defendant did not receive competent advice from his attorney. *Id.*; *Thew*, *supra*, 89-90. A review of the evidentiary hearing transcript in this case reveals that trial counsel was not questioned regarding what advice, if any, was given to defendant in connection with defendant's decision to plead guilty and nolo contendere. Additionally, defendant himself did not testify at the hearing. Because effective assistance of counsel is presumed and defendant has the burden of proving otherwise, *People v Ginther*, 390 Mich 436, 442-443; 212 NW2d 922 (1973), and because defendant has failed to show that his plea was based on incompetent advice, we find that ineffective assistance of counsel has not been shown.

Affirmed.

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