

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ERNEST RAY SMITH,

Defendant-Appellant.

UNPUBLISHED

October 1, 1996

No. 167621

LC No. 93-001119-FC

Before: J.H. Gillis, P.J., and G.S. Allen and J.B. Sullivan, JJ.*

MEMORANDUM.

Defendant pleaded nolo contendere to armed robbery, MCL 750.529; MSA 28.797, and possession of a firearm during the commission of a felony, MCL 750.227b; MSA 28.424(2). For those respective convictions, he was sentenced to eight to twenty years' imprisonment and two years' consecutive imprisonment. He appeals as of right. We affirm. This case has been decided without oral argument pursuant to MCR 7.214(A).

In tendering unconditional pleas, defendant has waived his issues regarding identification procedures, *People v Eubank*, 121 Mich App 227, 229-230; 328 NW2d 408 (1982), and ineffective assistance of counsel relating to trial preparation, *People v New*, 427 Mich 482, 493-494; 398 NW2d 358 (1986); *People v Vonins (After Remand)*, 203 Mich App 173 176; 511 NW2d 706 (1993). The trial court did not abuse its discretion in denying defendant's motion to withdraw his pleas. *People v Eloby (After Remand)*, 215 Mich App 472, 474-475; 547 NW2d 48 (1996). The record reveals that it was defendant's own decision to enter the pleas and to not withdraw them prior to sentencing.

Regarding sentencing, because defendant entered into a plea agreement with the knowledge that his minimum sentence would be no greater than eight years on the armed robbery offense, defendant cannot now claim that the sentence is disproportionate. *People v Cobbs*, 443 Mich 276, 285; 505 NW2d 208 (1993). Moreover, contrary to defendant's various assertions, the court fulfilled the terms

*Former Court of Appeals judges, sitting on the Court of Appeals by assignment pursuant to Administrative Order 1996-3.

of the sentencing agreement. Defendant received what he bargained for. See *People v Vitale*, 179 Mich App 420, 422; 446 NW2d 504 (1989). Finally, the Michigan Sentencing Guidelines are not violative of constitutional proportionality requirements. See *People v Potts*, 436 Mich 295, 302-303; 461 NW2d 647 (1990); *People v Milbourn*, 435 Mich 630, 635, 636, 650-651; 461 NW2d 1 (1990).

Affirmed.

/s/ John H. Gillis

/s/ Glenn S. Allen, Jr.

/s/ Joseph B. Sullivan