

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

CORNELIUS WARE,

Defendant-Appellant.

UNPUBLISHED

October 1, 1996

No. 185458

LC Nos. 94-002112-FH;

94-002112-HY

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

MEMORANDUM.

Defendant pleaded guilty of being a prisoner in possession of controlled substances, MCL 800.281(4); MSA 28.1621(4), and habitual offender, second offense, MCL 769.10; MSA 28.1082. He was sentenced to twelve to ninety months' imprisonment, and now 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 motion to withdraw his guilty plea. *People v Jones*, 190 Mich App 509, 512; 476 NW2d 646 (1991).

The trial court did not err in its questioning of defendant in order to establish the factual basis for this crime, MCR 6.302(D)(1). The use of leading questions, while not desirable, is not error. *People v Botzen*, 151 Mich App 561, 565; 391 NW2d 410 (1986); *People v Byrd*, 12 Mich App 186, 192; 162 NW2d 777 (1968). The trial court's questioning of defendant did not require him to make a legal determination that he possessed marijuana. Compare *People v Atcher*, 57 Mich App 148, 150-151; 226 NW2d 77 (1974). The court's questioning produced sufficient facts to allow it to conclude or infer that defendant was guilty of the crime to which he was pleading guilty. *People v Thomas Green*, 123 Mich App 563, 567-568; 332 NW2d 610 (1983).

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

Although the trial court failed to fully comply with MCR 6.302(E) at the plea hearing, this error did not affect defendant's substantial rights and so he was not entitled to withdraw his plea on that ground. *People v Love*, 76 Mich App 379, 383; 256 NW2d 602 (1977).

The trial court did not err by accepting defendant's guilty plea even though the court was aware that he was stabbed as a result of this offense. The trial court was not required to inquire into or explain possible defenses before accepting defendant's plea. *People v Burton*, 396 Mich 238, 242; 240 NW2d 239 (1976); MCR 6.302(B)(1). At the plea hearing, there was no evidence to suggest that the stabbing was directly related to defendant's decision to commit this crime. Thus, there was no evidence at the plea hearing that defendant committed this crime under duress. Defense counsel only raised the argument that defendant was coerced to commit this crime at the time of sentencing to show that this crime was an isolated incident. Testimony from the evidentiary hearing established that defendant discussed a duress defense with his counsel before pleading guilty. Therefore, defendant has failed to show that the trial court should not have accepted his plea.

The trial court did not err in denying defendant's motion to withdraw his plea due to the ineffective assistance of counsel. The record shows that defense counsel discussed a possible defense of duress or coercion with defendant. Defense counsel's advice was within the range of competence demanded of attorneys in criminal cases. *People v Dwayne Jackson*, 203 Mich App 607, 614; 513 NW2d 206 (1994). The record from the evidentiary hearing also supports the trial court's decision on the effectiveness of defense counsel with regard to sentencing. Defense counsel advised defendant of the consequences of his plea for purposes of sentencing and defendant denied that he was promised anything regarding sentencing on the record at the time of the plea. Defendant's guilty plea was voluntarily and knowingly entered. *In re Oakland Co Prosecutor*, 191 Mich App 113, 120; 477 NW2d 455 (1991).

Finally, defendant did not meet his burden in proving that his plea was induced by promises of leniency by his trial counsel when defendant denied that any promises were made about sentencing when he entered his plea. *People v Dwayne Jackson, supra*, 203 Mich App 612-613; *People v Weir*, 111 Mich App 360, 361-362; 314 NW2d 621 (1981).

Affirmed.

/s/ John H. Gillis

/s/ Glenn S. Allen, Jr.

/s/ Joseph B. Sullivan