

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

SHAWNTA DARNELL COOPER,

Defendant-Appellant.

UNPUBLISHED

October 4, 1996

No. 187827

LC No. 94-004308-FC

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

MEMORANDUM.

Defendant pleaded guilty to first-degree criminal sexual conduct, MCL 750.520b(1)(e); MSA 28.288(2)(1)(e), assault with intent to rob while armed, MCL 750.89; MSA 28.284, 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 twenty-five to seventy-five years' imprisonment, fifteen to forty-five 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(E)(1)(b).

Defendant claims the trial court erred in denying his motion for plea withdrawal because he was allegedly led to believe that the prosecution would recommend a maximum sentence of ten to fifteen years in prison. We disagree. There is no absolute right to withdraw a guilty plea once it has been accepted by the trial court. *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.* That decision will not be disturbed on appeal unless there is a clear abuse of discretion resulting in a miscarriage of justice. *Id.* To set aside a plea after sentencing, there must be some error in the plea proceeding. MCR 6.311; *People v Montrose (After Remand)*, 201 Mich App 378, 380; 506 NW2d 565 (1993).

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

In relating the parties' agreement at the plea hearing, the prosecutor stated that in exchange for defendant's pleas of guilty, a second charge of felony-firearm and the charges in another case (which included CSC I, armed robbery, and two counts of felony-firearm) would be dismissed. Both defendant and defense counsel confirmed that this was the entire plea agreement. In addition, defendant replied to defense counsel's questions that he fully understood the plea agreement, that he had no questions about the agreement, and that he was pleading guilty to two offenses that carried maximum sentences of life imprisonment. Defendant also indicated to the trial court that he understood that CSC I and assault with intent to commit armed robbery were felonies which carried maximum penalties of life imprisonment or imprisonment for any term of years.

The trial court asked defendant whether he understood that, if the court accepted his plea, he would be giving up any claim that the plea was the result of promises or threats which he did not disclose to the court. Defendant replied that he understood and that no one had used any other promises, force, fraud, or tricks of any kind to get him to plead guilty. The trial court found that defendant's plea was "made accurately, freely, knowingly, voluntarily, and understandingly offered without undue influence, compulsion, duress, or the promise of leniency except as indicated by the plea agreement." Thereafter, the trial court denied defendant's motion to withdraw his pleas.

This Court has generally rejected as a basis for reversal off-the-record promises of leniency supported only by the defendant's post-conviction allegations. *People v Schirle*, 105 Mich App 381, 385; 306 NW2d 520 (1981). This is particularly true where the defendant has sworn that no promises other than those on the record were made to him. *Id.* A remand to the trial court for a hearing on alleged promises of leniency will only be ordered where the record contains some support that such promises were made. *Id.* See also *People v Jackson*, 203 Mich App 607, 612-613; 513 NW2d 206 (1994). As the trial court found in denying defendant's motion to withdraw his pleas, the record in this case provides no support for defendant's argument regarding a sentencing agreement. Therefore, the motion was properly denied.

Affirmed.

/s/ John H. Gillis

/s/ Glenn S. Allen, Jr.

/s/ Joseph B. Sullivan