

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

KEITH MARK KELSEY,

Defendant-Appellant.

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UNPUBLISHED  
October 18, 1996

No. 188750  
LC No. 94-002972-FH

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

MEMORANDUM.

Defendant pleaded guilty to two counts of larceny by conversion, MCL 750.362; MSA 28.594, and was sentenced to concurrent terms of twenty-four to sixty months' imprisonment. He appeals as of right. We affirm. This case has been decided without oral argument pursuant to MCR 7.214(A).

When reviewing a claim of ineffective assistance of counsel arising out of a guilty plea, the court must determine whether the defendant tendered the plea voluntarily and understandingly. *People v Thew*, 201 Mich App 78, 89; 506 NW2d 547 (1993). The question is not whether a court would, in retrospect, consider counsel's advice to be right or wrong, but whether the advice was within the range of competence demanded of attorneys in criminal cases. *Id.* Where the record made in connection with a defendant's plea proceeding does not factually support his claim of ineffectiveness, it is incumbent upon the defendant to move to set aside the plea and to make a separate record factually supporting the claim, otherwise review is precluded. *People v Blythe*, 417 Mich 430, 438; 339 NW2d 399 (1983); *People v Ginther*, 390 Mich 436, 443; 212 NW2d 922 (1973). See also MCR 6.311(C) ("A defendant convicted on the basis of a plea may not raise on appeal any claim . . . that the plea was not an understanding, voluntary, or accurate one, unless the defendant has moved to withdraw the plea in the trial court").

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

In this case, defendant did not raise the issue of ineffective assistance of counsel in a motion to withdraw his guilty plea or a motion for an evidentiary hearing in the trial court, nor does the record made in connection with defendant's plea proceeding indicate that defendant received incompetent advice from his attorney. Therefore, appellate review is precluded. *Blythe, supra; Ginther, supra.*

Affirmed.

/s/ John H. Gillis

/s/ Glenn S. Allen, Jr.

/s/ Joseph B. Sullivan