

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JOHN WINSTON GODIN,

Defendant-Appellant.

UNPUBLISHED

November 26, 1996

No. 168959

LC No. 93-000460-FH

Before: Jansen, P.J., and Reilly and E. Sosnick,* JJ.

PER CURIAM.

Defendant pleaded nolo contendere to unarmed robbery, MCL 750.530; MSA 28.798, and was sentenced to four to fifteen years' imprisonment. He appeals as of right. We affirm.

The record does not support defendant's claim that he tendered his plea in exchange for a sentence recommendation by the prosecutor that he receive probation and a jail term for time previously served. *People v Killebrew*, 416 Mich 189, 206-207; 330 NW2d 834 (1982). Therefore, the trial court did not abuse its discretion in denying defendant's post-sentencing motion for plea withdrawal. *People v Effinger*, 212 Mich App 67, 69; 536 NW2d 809 (1995).

Defendant's sentence, which is within the recommended range of the sentencing guidelines, does not violate the principle of proportionality. *People v Milbourn*, 435 Mich 630, 651; 461 NW2d 1 (1990); *People v Broden*, 428 Mich 343, 354-355; 408 NW2d 789 (1987); *People v Williams (After Remand)*, 198 Mich App 537, 543; 499 NW2d 404 (1993). The trial court did not abuse its discretion in denying defendant's motion for resentencing. Because defendant is not entitled to be resentenced, we need not address his claim that resentencing should be conducted by a different judge.

Defendant's claim that there was insufficient evidence presented at the preliminary examination to bind him over to the circuit court has not been preserved for appellate review because he did not raise the claim below and his plea was not conditioned upon being able to raise the issue on appeal.

* Circuit judge, sitting on the Court of Appeals by assignment.

People v New, 427 Mich 482; 398 NW2d 358 (1986); *People v Ornelas*, 99 Mich App 382, 384-385; 297 NW2d 674 (1980).

Defendant stipulated to the use of the preliminary examination testimony to establish the factual basis for his no contest plea. For that reason, he may not now complain that the trial court abused its discretion in using the preliminary examination testimony. See *People v Buck*, 197 Mich App 404, 423; 496 NW2d 321 (1992). In any event, a review of the record reveals that the elements of unarmed robbery were sufficiently established at the preliminary examination to justify defendant's bindover to the circuit court. *People v Grant*, 211 Mich App 200, 202; 535 NW2d 581 (1995).

Next, contrary to defendant's assertion, the trial court complied with the requirements of MCR 6.302(C) in ascertaining the terms of the plea agreement and confirming those terms with defendant. Because there was no sentence agreement in this case, the court was not required to "explain to the defendant that the court is not bound to follow the sentence disposition or recommendation agreed to by the prosecutor, and that if the court chooses not to follow it, the defendant will be allowed to withdraw from the plea agreement." See MCR 6.302(C)(3).

Furthermore, because the evidence presented at the evidentiary hearing revealed that there was no sentence agreement, the trial court had no duty to inform defendant of the specific sentence it intended to impose prior to offering defendant the opportunity to withdraw his plea. *Killebrew, supra*, pp 209-210.

Lastly, defendant has not shown that he was denied the effective assistance of counsel. *People v Pickens*, 446 Mich 298; 521 NW2d 797 (1994); *People v Corteway*, 212 Mich App 442, 444-445; 538 NW2d 60 (1995); *People v Juarez*, 158 Mich App 66, 73; 404 NW2d 222 (1987).

Affirmed.

/s/ Kathleen Jansen
/s/ Maureen Pulte Reilly
/s/ Edward Sosnick