

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

CLOZELL JOHNSON,

Defendant-Appellant

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UNPUBLISHED

February 21, 1997

No. 189682

Manistee Circuit Court

LC No. 95-002480 FH

Before: White, P.J., and Cavanagh and J.B. Bruff,\* JJ.

MEMORANDUM.

Defendant pleaded guilty of two counts of malicious destruction of realty, MCL 750.380; MSA 28.612, and of being an habitual offender, third offense, MCL 769.11; MSA 28.1083. The trial court sentenced defendant to sixty-three months' to eight years' imprisonment. Defendant appeals as of right. We affirm.

Defendant's sole issue on appeal is that the trial court erred in denying his motion to withdraw his guilty plea. However, there is no absolute right to withdraw a guilty plea after the trial court has accepted it. *People v Gomer*, 206 Mich App 55, 56; 520 NW2d 360 (1991). On a defendant's motion or with the defendant's consent, a court may, in the interest of justice, permit an accepted plea to be withdrawn before sentence is imposed unless the withdrawal of the plea would substantially prejudice the prosecutor because of reliance on the plea. MCR 6.310(B).

The defendant has the burden of establishing a fair and just reason for withdrawal of the plea. *People v Jackson*, 203 Mich App 607, 611; 513 NW2d 206 (1994). If the defendant fails to satisfy his burden, the trial court will not abuse its discretion in denying the motion. *Gomer*, *supra* at 59. Defendant moved to withdraw his plea at the sentencing hearing on the basis that he had not understood that he could get a maximum sentence of eight years. However, at the plea hearing, defendant responded affirmatively when the trial court asked him if he understood that the maximum possible

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

penalty was eight years. We conclude that defendant has not satisfied his burden of establishing a fair and just reason for withdrawal of the plea. See *Jackson, supra*.

Affirmed.

/s/ Helene N. White  
/s/ Mark J. Cavanagh  
/s/ John B. Bruff