

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

KENNETH EDWARD HADER,

Defendant-Appellant.

UNPUBLISHED
February 25, 1997

No. 191645
Sanilac Circuit Court
LC No. 95-004282-FH;
95-004283-FH

Before: Jansen, P.J., and Reilly and W.C. Buhl,* JJ.

PER CURIAM.

Defendant pleaded guilty to attempted assault with a dangerous weapon, MCL 750.92; MSA 28.287; MCL 750.82; MSA 28.277 in lower court number 95-004282-FH. He also pleaded guilty to resisting and obstructing a police officer, MCL 750.479; MSA 28.747, and second habitual offense, MCL 769.10; MSA 28.1082, in lower court number 95-004283-FH. He was thereafter sentenced to concurrent terms of sixteen to twenty-four months' imprisonment for attempted assault with a dangerous weapon and two to three years' imprisonment for second habitual offender. Defendant then moved to withdraw his guilty pleas in the trial court, but that motion was denied. Defendant appeals as of right and we affirm.

On appeal, defendant argues that the trial court abused its discretion in denying his motion to withdraw his guilty pleas. Defendant contends that his pleas were not voluntary, knowing, and understanding because he believed that he was pleading guilty to misdemeanors, rather than felony offenses, and that he would be sentenced to a prison term of time served. After a plea has been accepted by the trial court, there is no absolute right to withdraw the plea. *People v Eloby (After Remand)*, 215 Mich App 472, 474; 547 NW2d 48 (1996). When a motion to withdraw a plea is made after sentencing, the decision whether to grant it rests within the discretion of the trial court. *Id.*, p 475. That decision will not be disturbed on appeal unless there is a clear abuse of discretion resulting in a miscarriage of justice. *Id.*

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

To set aside a plea after sentencing, MCR 6.311 requires error in the plea proceeding. *People v Montrose (After Remand)*, 201 Mich App 378, 380; 506 NW2d 565 (1993). After a thorough review of the record, we do not find any error in the plea proceeding to justify setting aside the guilty plea. Here, the trial court fully complied with the plea-taking requirements of MCR 6.302. The trial court apprised defendant of the offenses to which he was pleading guilty and the maximum possible sentences for those offenses. Although defendant did state on the record that he believed that the offenses involved were misdemeanors, the trial court explained to him that they were felony convictions. Therefore, defendant's mistaken belief that he was pleading guilty to misdemeanor convictions, rather than felony convictions, cannot be attributed to the trial court.

Further, there is nothing in the record to indicate that defendant was told that he would be sentenced to "time served." The trial court explained to defendant that the maximum possible sentence for attempted assault with a dangerous weapon was two years and that the maximum possible sentence for second habitual offense was three years. Defendant also stated on the record that there were no promises made in exchange for his plea and that he was not threatened by anyone to plead guilty. There is simply no indication in the record that defendant was informed that he would be sentenced to time served.

Accordingly, we conclude that the trial court did not abuse its discretion in denying defendant's motion to withdraw his guilty pleas. There is no error in the plea proceeding to justify setting aside defendant's pleas. MCR 6.311.

Affirmed.

/s/ Kathleen Jansen
/s/ Maureen Pulte Reilly
/s/ William C. Buhl