STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

PATRICK MARK SCHABOW,

Defendant-Appellant.

UNPUBLISHED
February 28, 1997

No. 183139
Livingston Circuit
LC No. 94-008297-FH

Before: D.F. Walsh,* P.J., and R.P. Griffin** and W.P. Cynar,* JJ.

MEMORANDUM.

Pursuant to a plea agreement, defendant pleaded guilty to operating a motor vehicle while under the influence of intoxicating liquor, third offense, MCL 257.625(6); MSA 9.2325(6), prison escape, MCL 750.193; MSA 28.390, and habitual offender, third offense, MCL 769.11; MSA 28.1083. He was sentenced to enhanced terms of six to ten years' imprisonment for the OUIL-3rd conviction and one to ten years' imprisonment for the escape conviction. He appeals as of right. We affirm. This case has been decided without oral argument pursuant to MCR 7.214(A).

First, we reject defendant's claim that he did not understand the terms of the sentencing agreement. It is clear from the record that the sentencing agreement entered into between the parties was that the prosecutor would recommend a minimum sentence not to exceed seven years. This was explained to defendant during the plea-taking process, along with what the potential maximum sentences were, and he acknowledged that he understood that seven years was the maximum minimum sentence which could be imposed. Moreover, during the hearing on defendant's motion to withdraw his guilty plea, defendant admitted on cross-examination that he realized that the maximum minimum sentence he could receive was seven years. He also admitted that he had been through the criminal justice system

*Former Court of Appeals judges, sitting on the Court of Appeals by assignment pursuant to Administrative Order 1996-10.
**Former Supreme Court justice, sitting on the Court of Appeals by assignment pursuant to Administrative Order 1996-10.

before and that he understood what minimums and maximums meant. Further, in connection with his claim that a promise of leniency had induced his guilty plea, defendant testified that his attorney told him that she "got a deal for seven years, seven year max on your minimum" but that she had promised him that he would get less than a seven-year minimum sentence. Clearly, defendant's testimony in this regard indicates that he knew that his *minimum* sentence could not exceed seven years. Additionally, the presentence investigation report (PSIR) clearly indicates that the prosecutor recommended a seven-year cap on the minimum sentence. Prior to sentencing, defendant acknowledged that he had reviewed the PSIR. Because the record reveals that defendant was fully aware of the terms of the sentencing agreement, the trial court's denial of his motion for plea withdrawal was not an abuse of discretion. *People v Effinger*, 212 Mich App 67, 69; 536 NW2d 809 (1995). Clearly, defendant's plea was voluntarily made.

We also reject defendant's claim that his guilty plea was induced by his attorney's promise of leniency. Defendant swore during the plea-taking process that he had not been promised anything in addition to the promises contained in the plea agreement and the only evidence that defendant received a promise of leniency was defendant's postconviction allegation. Therefore, defendant's claim that his plea was induced by a promise of leniency must fail.

Defendant next claims that he was denied due process in the sentencing procedure because his parole agent prepared the PSIR and she was also the person who notified police that defendant may have been driving in violation of his tether status. Specifically, defendant contends that on the basis of his parole agent's "bias" against him, a "fair" PSIR was not prepared in this case. Defendant's cites no authority in support of this claim. Hence, this issue is not preserved for appellate review. *Mann v Mann*, 190 Mich App 526, 535-537; 476 NW2d 439 (1991). Moreover, defendant does not offer any factual support for the claim that his parole agent was biased against him. He points to no information in the PSIR which is a product of bias. In fact, at sentencing, after minor inaccuracies were corrected, both defense counsel and defendant stated that the PSIR contained no inaccuracies, indicating that no biased information was contained in the report. We therefore find no merit in defendant's claim.

Next, defendant's unconditional guilty plea waived any claim that the habitual offender information was untimely filed. See *People v Shelton*, 412 Mich 565; 315 NW2d 537 (1982); *People v Perry*, 216 Mich App 277; 549 NW2d 42 (1996); *People v Bordash*, 208 Mich App 1, 4; 527 NW2d 17 (1994).

Lastly, in light of the serious nature of the offenses committed by defendant, his extensive criminal record, and the fact that he continues to endanger human life by drinking and driving, we conclude that his sentences do not violate the principle of proportionality. *People v Milbourn*, 435 Mich 630; 461 NW2d 1 (1990); *People v Gatewood (On Remand)*, 216 Mich App 559; 550 NW2d 265 (1996).

Affirmed.

/s/ Daniel F. Walsh

/s/ Robert P. Griffin
/s/ Walter P. Cynar