

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DANON JEREMY OLDHAM,

Defendant-Appellant.

UNPUBLISHED
February 28, 1997

No. 184672
Recorder's Court
LC No. 93-008587

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

MEMORANDUM.

Defendant pleaded guilty to manslaughter with a motor vehicle, MCL 750.321; MSA 28.553, and was sentenced to seven to fifteen years' imprisonment. He appeals by leave granted. We affirm. This case has been decided without oral argument pursuant to MCR 7.214(E)(1)(b).

Defendant first contends that his plea was not knowing, intelligent and voluntary because the court failed to specifically inform him that he had the right to appeal, that he was waiving his constitutional right to appeal and failed to ask defendant if he was voluntarily relinquishing that right. Since the premise of defendant's argument is that he would not have pleaded guilty had he known he could not appeal, this is a moot issue since this Court granted defendant's application for leave to appeal. In any event, this claim is without merit. A review of the transcript of the plea proceeding indicates that the court fully complied with its duties under *People v Rodriguez*, 192 Mich App 1, 6; 480 NW2d 287 (1991).

Next, we reject defendant's claim that his plea was based on an illusory bargain. Even if the court lost jurisdiction over some of the charges, the plea agreement provided for dismissal of other

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charges and a sentencing agreement. Under these circumstances, the bargain was not illusory. *People v Taylor*, 418 Mich 954; 344 NW2d 7 (1984).

Finally, we reject defendant's claim of ineffective assistance of counsel. When reviewing a claim of ineffective assistance of counsel arising out of a guilty plea, the pertinent inquiry is whether the defendant's plea was made voluntarily and understandingly. *People v Swirles (After Remand)*, 218 Mich App 133; 553 NW2d 357 (1996). The question is not whether, in retrospect, counsel's advice was right or wrong; it is whether the advice was within the range of competence demanded of lawyers in criminal cases. *In re Oakland Co Prosecutor*, 191 Mich App 113, 122; 477 NW2d 455 (1991).

As noted, the plea bargain was not illusory. Hence, there was no ineffective assistance of counsel resulting from allowing defendant to plead guilty based on the bargain. The failure to pursue a claim of dismissal of the manslaughter charge and the failure to advise defendant about lesser included offenses cannot be the basis of a claim of ineffective assistance of counsel since such claims do not reach beyond the determination of the defendant's factual guilt and implicate the very authority of the state to bring the defendant to trial. *People v Lannon*, 441 Mich 490, 493; 490 NW2d 396 (1992); *People v New*, 427 Mich 482, 491, 492; 398 NW2d 358 (1986); *People v Vonins (After Remand)*, 203 Mich App 173, 174-176; 511 NW2d 706 (1993).

Affirmed.

/s/ Daniel F. Walsh

/s/ Robert P. Griffin

/s/ Walter P. Cynar