STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ROBERT WILLIAM PALLITTO,

Defendant-Appellant.

UNPUBLISHED
March 4, 1997

No. 176576
Macomb Circuit
LC No. 92-002034-FH

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

MEMORANDUM.

Defendant pleaded guilty to possession with intent to deliver fifty grams or more but less than 225 grams of cocaine, second offense, MCL 333.7401(2)(a)(iii); MSA 14.15(7401)(2)(a)(iii) and MCL 333.7413(2); MSA 14.15(7413)(2). On May 9, 1994, defendant was permitted to withdraw the plea. On May 20, 1994, defendant requested a reinstatement of the plea and was sentenced to twelve to forty years' imprisonment. Defendant appeals as of right. We affirm. This case has been decided without oral argument pursuant to MCR 7.214(A).

An entrapment defense is waived if it is not raised before sentencing. *People v Crall*, 444 Mich 463; 510 NW2d 182 (1993). Although defendant raised the issue of entrapment before his plea and sentence, the trial court issued an order following a hearing on October 12, 1993, directing defendant to file a brief by October 25, 1993. Contrary to defendant's argument on appeal, there is no record evidence that a brief was filed. Further, the trial court's February 1, 1994 order to schedule a trial date for defendant's four pending cases does not imply that the trial court denied the motion to dismiss based on entrapment. Because a trial court speaks only through its orders and judgments, *People v Collier*, 105 Mich App 46, 52; 306 NW2d 387 (1981), we find no record support for defendant's position that

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

the trial court decided the issue of entrapment. Limiting our review to the existing record, *Admiral Ins Co v Columbia Casualty Ins Co*, 194 Mich App 300, 305; 486 NW2d 351 (1992), we conclude that defendant abandoned his claim of entrapment by not following through on this issue after the October 12, 1993 hearing by requesting a decision from the trial court. See *People v Riley*, 88 Mich App 727, 731; 279 NW2d 303 (1979).

With regard to defendant's second issue, we agree that a guilty plea does not waive a double jeopardy claim. *People v Hellis*, 211 Mich App 634, 639; 536 NW2d 587 (1995). However, a prerequisite to having a newly raised claim considered on appeal is that there be a sufficient record to decide the issue. *People v Snow*, 386 Mich 586, 591; 194 NW2d 314 (1972). The instant record does not contain factual development on the forfeiture action. Moreover, on the authority of *United States v Ursery*, 518 US ___ ; 116 S Ct 2135 ; 135 L Ed 2d 549 (1996), we reject defendant's claim as lacking legal merit because an in rem civil forfeiture is neither punishment nor criminal for purposes of the Double Jeopardy Clause.

Affirmed.

/s/ Daniel F. Walsh
/s/ Robert P. Griffin
/s/ Walter P. Cynar