

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

NICHOLAS D. CARTER,

Defendant-Appellant.

UNPUBLISHED

June 10, 1997

No. 194345

Recorder's Court

LC No. 95-1139

Before: Saad, P.J., and Hood and McDonald, JJ.

MEMORANDUM.

The trial court did not abuse its discretion when it denied defendant's post-sentencing motion to withdraw his plea of guilty. First, the issue of self-defense was factually explored at the plea taking, and defendant's admissions at that time, under oath, contradict any possibility of a valid claim of self-defense. Defendant had no fear for the safety of himself or his cousin, the latter being an aggressor, failed to retreat before attacking his victim, and kicked and beat the elderly victim after the victim was on the ground and helpless. See *People v Kulick*, 209 Mich App 258; 530 NW2d 163 (1995), *remanded on other gds* 449 Mich 851; 535 NW2d 788 (1995). Moreover, defendant's plea of guilty waived both such a factual defense and a claim of ineffective assistance of counsel relating to such factual defenses. *People v Vonins (After Remand)*, 203 Mich App 173, 175; 511 NW2d 706 (1993); *People v Bordash*, 208 Mich App 1, 2; 527 NW2d 17 (1994), conflict panel refused 208 Mich App 801; 527 NW2d 19 (1994).

As to the assertion that the trial court erred in denying an evidentiary hearing on defendant's claim of ineffective assistance of counsel, the trial court had already explored such issues at an evidentiary hearing on June 23, 1995, wherein it determined that defendant was generally satisfied with his attorney, that she had given him advice which he had understood by that time, and that when on previous occasions she had given advice he claimed not to understand, he had failed to seek clarification by indicating to her his lack of understanding. Defense counsel's only responsibility is to provide information; counsel cannot possibly insure comprehension. *People v Jackson*, 203 Mich App 607, 614; 513 NW2d 206 (1994). In conjunction with the claim of ineffective assistance of counsel in the guilty plea context, defendant has failed to establish that any advice of counsel was outside the range of

competence demanded of attorneys in criminal cases. *In re Oakland Prosecutor*, 191 Mich App 113, 121-122; 477 NW2d 455 (1991).

At the plea taking, the trial court and the prosecutor went to some lengths to assure that defendant understood the nature of a sentence bargain involving a sentence within the guideline range. Defendant was specifically informed that he was agreeing to being sentenced within a guideline range of ten to twenty-five years, and not to a sentence of ten- to twenty-five-years imprisonment. Defendant has failed to establish either ineffective assistance of counsel in this respect, *In re Oakland Prosecutor*, *supra*, 191 Mich App at 124, or that the trial court erred in rejecting his post-sentencing claim, contradicting the plea taking record, that he was promised a ten- to twenty-five-year sentence. *People v Gant*, 4 Mich App 671, 675; 145 NW2d 381 (1966).

Affirmed.

/s/ Henry William Saad

/s/ Harold Hood

/s/ Gary R. McDonald