

STATE OF MICHIGAN
COURT OF APPEALS

DAVID MICHAEL MARTIN,

Plaintiff-Appellant,

v

DAHM & DOERR, PC, NADINE RENEE DAHM,
PC, and NADINE RENEE DAHM,

Defendants-Appellees.

UNPUBLISHED

November 25, 1997

No. 193785

Kent Circuit Court

LC No. 95-005445 NM

Before: Jansen, P.J., and Fitzgerald and Young, JJ.

MEMORANDUM.

Plaintiff appeals as of right from the summary dismissal of his legal malpractice action. We affirm.

Plaintiff pleaded guilty to second-degree murder, after he used a brick to beat to death the victim, a woman who spurned his romantic advances. Plaintiff received a sentence of 50 to 100 years' imprisonment. He subsequently appealed his conviction and sentence to this Court by leave granted. We remanded this case for "full resentencing" in light of *People v Milbourn*, 435 Mich 630; 461 NW2d 1 (1990), without expressing an opinion on whether the principle of proportionality had been violated. *People v Martin*, unpublished memorandum opinion of the Court of Appeals, (Docket No. 132330, issued 12/3/92). On remand, plaintiff moved unsuccessfully to withdraw his guilty plea. The trial court denied the motion and reimposed a 50-to-100-year sentence.

We have reviewed the record and we find, as a matter of law, that plaintiff failed to demonstrate that his appellate counsel's failure to challenge on appeal the trial court's denial of plaintiff's motion to withdraw his guilty plea constituted a failure to exercise reasonable skill, care, discretion and judgment in the conduct of plaintiff's criminal appeal, or that, but for the failure to pursue this appellate challenge, the outcome of the criminal appeal would have been favorable to plaintiff. *Radtke v Miller, Canfield, Paddock & Stone*, 453 Mich 413, 424; 551 NW2d 698 (1996); *Charles Reinhart Co v Winiemko*, 444 Mich 579, 608; 513 NW2d 773 (1994); *Coleman v Gurwin*, 443 Mich 59, 63; 503 NW2d 435 (1993). The trial court denied plaintiff's motion to withdraw his plea, which was premised on a claim of

ineffective assistance of trial counsel, because plaintiff's assertion that he was assured that his nonfatal poisoning of the victim would not be considered by the trial court when imposing sentence was expressly contradicted by statements placed on the record by the trial court and trial counsel at the time of plaintiff's plea-taking. Plaintiff has presented no documentary evidence that would call into question the accuracy of the trial court's characterization of the lower court record. Under such circumstances, there is no evidence in the record that a reasonable basis existed for a belief that plaintiff had a meritorious issue with regard to the denial of his motion to withdraw his plea. Had defendant attempted to advance on plaintiff's behalf an appellate challenge to the trial court's ruling, defendant would have subjected both plaintiff and herself to possible sanctions. MCR 7.216(C); MRPC 3.1. Accordingly, while appellate counsel was under the mistaken belief that she was precluded from advancing an appellate challenge to the trial court's ruling, *People v Ezell*, 446 Mich 869; 522 NW2d 632 (1994), her mistaken belief did not deny plaintiff the opportunity to advance a meritorious issue on appeal.

Affirmed.

/s/ Kathleen Jansen

/s/ E. Thomas Fitzgerald

/s/ Robert P. Young, Jr.