

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DANIEL WILLIAM CHAMBERLAIN,

Defendant-Appellant.

UNPUBLISHED

December 16, 1997

No. 178493

Genesee Circuit Court

LC No. 94-050339 FH

Before: O'Connell, P.J., and White and C. F. Youngblood*, JJ.

MEMORANDUM.

Defendant appeals by right his plea-based conviction of OUIL third offense, MCL 257.625; MSA 9.2325, enhanced as a second offender, MCL 769.10; MSA 28.1084, pursuant to which he received a sentence of 2-1/2 to 7-1/2 years' imprisonment. Defendant presents three issues for appellate consideration.

Defendant contends that the trial court erred in denying his motion to withdraw his plea because neither the trial court nor his attorney explained to him the special sentencing consequences that attach to habitual offender sentences. This argument is without merit. First, the court rule requirement that the defendant be advised, when pleading guilty, of the consequences of the plea, now found in MCR 6.302(B)(2), does not encompass advice beyond the maximum possible sentence and any mandatory minimum sentence required by law. *People v Johnson*, 413 Mich 487, 490; 320 NW2d 876 (1982). Second, defendant actually received the ostensibly missing advice. We note as well that the supplemental information filed in this case on May 13, 1994, states, "Not eligible for parole until completion of minimum term fixed by sentencing judge without written approval of sentencing judge or his/her successor." This information was read to defendant at his arraignment on the supplemental information on May 16, 1994.

Defendant's second issue is a variation on the first, a claim of ineffective assistance of counsel based on failure to provide defendant advice concerning habitual offender sentencing consequences. Not only does the record fail to contain even an affidavit of defendant as to the advice received from his

* Circuit judge, sitting on the Court of Appeals by assignment.

trial counsel, but because counsel was present when the trial court read the supplemental information to defendant, putting defendant on notice of special habitual offender sentencing consequences, any such claims are without merit, particularly where, as here, defendant received a sentence bargain. *People v Jackson*, 417 Mich 243, 246; 334 NW2d 371 (1983). Ineffective assistance of counsel is not established on this record. *People v Thew*, 201 Mich App 78, 89-90; 506 NW2d 547 (1993).

Finally, defendant contends that the trial court abused its discretion by failing to exercise discretion in setting the maximum sentence under the habitual offender statute. However, the trial court gave no indication that it lacked knowledge of it lacked knowledge of its discretion in setting the maximum sentence. *People v Beneson*, 192 Mich App 469, 470-471; 481 NW2d 799 (1992). Therefore, we find no abuse of discretion.

Affirmed.

/s/ Peter D. O'Connell

/s/ Helene N. White

/s/ Carole F. Youngblood