

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JORGE CHANSUOLME, JR.,

Defendant-Appellant.

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UNPUBLISHED

March 6, 1998

No. 189332

Detroit Recorder's Court

LC No. 94-013575-FC

Before: Gage, P.J., and Reilly and Jansen, JJ.

PER CURIAM.

Defendant pleaded nolo contendere to two counts of second-degree murder, MCL 750.317; MSA 28.549, and was sentenced to concurrent terms of twenty to forty years' imprisonment. He appeals as of right and we affirm.

Defendant first argues that he received ineffective assistance of counsel at his plea hearing which thereby invalidated his pleas of nolo contendere. We disagree. Even if defendant's trial counsel failed to discuss the maximum possible sentence with him, that maximum was presented to defendant at the plea hearing by the trial court and consequently, his plea was made knowingly, voluntarily, and understandingly. MCR 6.302; *People v Swirles (After Remand)*, 218 Mich App 133, 138; 553 NW2d 357 (1996). Specifically, the following exchange occurred at defendant's plea hearing:

*The Court:* There's one other thing I have to tell you and that is **the maximum sentence for murder in the second degree is life imprisonment or any number of years up to life**. I indicated to [defense counsel] and [the prosecutor] that I would stay within the guidelines that are recommended by the Supreme Court as to your minimum which is what [defense counsel] is concerned about for you; do you understand that? [Emphasis added.]

*The Defendant:* Yes.

The trial court specifically stated that the maximum possible sentence was life. Further, the trial court stated that it would stay within the guidelines regarding defendant's minimum sentence, but made

no such promise with regard to the maximum sentence.<sup>1</sup> In addition, there is no evidence on the record to indicate that defendant's trial counsel led defendant to believe that a sentence "within the guidelines" meant that his maximum sentence would be within the guidelines. In fact, defendant's trial counsel stated that he only discussed the possible minimum sentences with defendant and that he never discussed the possible maximum sentences with defendant. Trial counsel's failure to discuss the maximum sentence could not have been prejudicial because the trial court specifically informed defendant that the maximum sentence could be life in prison. Further, the plea agreement form signed by defendant indicated that the statutory maximum penalty for each count of second-degree murder was life. Defendant, therefore, fails to meet the required burden of demonstrating ineffective assistance of counsel because he failed to show that his trial counsel's actions prejudiced his decision to enter a plea of nolo contendere. See *People v Haynes (After Remand)*, 221 Mich App 551, 558; 562 NW2d 241 (1997) (plea should not have been withdrawn where hearing transcript demonstrated that the defendant was fully aware of the possible sentencing consequences).

Next, there is no need to remand for an evidentiary hearing with respect to defendant's claim of ineffective assistance of counsel.<sup>2</sup> The record adequately shows that defendant was not prejudiced by trial counsel's representation of him at the plea hearing and the record indicates that defendant's plea was made knowingly, voluntarily, and understandingly. *In re Oakland Co Prosecutor*, 191 Mich App 113, 120; 477 NW2d 455 (1991).

Defendant argues lastly that the trial court abused its discretion by refusing to resentence him or to allow him to withdraw his plea. We disagree. There was no basis for resentencing because, as discussed above, the original sentence was not invalid. MCR 6.429(A); *People v Wybrecht*, 222 Mich App 160, 166; 564 NW2d 903 (1997). Further, there was no miscarriage of justice and the trial court did not abuse its discretion by refusing to permit defendant to withdraw his plea because defendant did not receive ineffective assistance of counsel at his plea hearing. *People v Ovalle*, 222 Mich App 463, 465; 564 NW2d 147 (1997).

Affirmed.

/s/ Hilda R. Gage  
/s/ Maureen Pulte Reilly  
/s/ Kathleen Jansen

<sup>1</sup> We note that defendant's minimum sentence is within the guidelines range of eight to twenty-five years.

<sup>2</sup> In unpublished orders dated November 27, 1996 and July 25, 1997, this Court denied defendant's motion to remand with respect to his ineffective assistance of counsel claim.