

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff- Appellee,

v

ARTHUR ROBINSON, a/k/a ,
CALVIN DRUMGOOLE,

Defendant-Appellant.

UNPUBLISHED

May 5, 1998

No. 191596

Macomb Circuit Court

LC No. 93-001998 FH

Before: Neff, P.J, and White and D. A. Teeple,* JJ.

MEMORANDUM.

Defendant appeals by right from his guilty plea based conviction for breaking and entering an occupied dwelling with intent to commit larceny, MCL 750.110; MSA 28.305. We affirm.

Defendant asserts that his conviction violates double jeopardy protections when he did not consent to the mistrial declared in his original jury trial. Where a motion for mistrial is made by defense counsel, retrial is generally allowed on the premise that by making or consenting to the motion, the defendant waives a double jeopardy claim. *People v Dawson*, 431 Mich 234, 253; 427 NW2d 886 (1988); *People v Tracey*, 221 Mich App 321, 325; 561 NW2d 133 (1997). The record shows that defense counsel moved for the mistrial in the original jury trial, based on defendant's conduct, and it was represented that defendant consented to the mistrial. Under these circumstances, defendant has waived a double jeopardy claim.

Defendant also asserts that his guilty plea was involuntary, as it was based on the pressures and duress he faced while incarcerated in the Macomb County jail. In accepting defendant's plea, the trial court asked defendant if any threats, promises or other inducements were made to get him to plead guilty. Defendant stated that he was taking the plea because he did not want to be in Macomb County jail. Defendant complained about his treatment in the jail, but stated that no threats were made to induce his plea, which he acknowledged was voluntary. Neither defense counsel nor the prosecutor were aware of any basis for rejecting the plea. Detention itself has never been recognized as so

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

inherently coercive that it will render a guilty plea invalid. *People v Thew*, 201 Mich App 78, 84; 506 NW2d 547 (1993). Where defendant stated that the plea was voluntary at the time it was accepted, there is no showing that the trial court erred in denying defendant's later motion to withdraw his plea.

Affirmed.

/s/ Janet T. Neff

/s/ Helene N. White

/s/ Donald A. Teeple