

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

BEVERLY JANE TAYLOR,

Defendant-Appellant.

UNPUBLISHED

August 13, 1999

No. 202831

Ottawa Circuit Court

LC No. 92-016559 FH

Before: Griffin, P.J., and Wilder and R.J. Danhof*, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of delivery of less than fifty grams of cocaine, MCL 333.7401(2)(a)(iv); MSA 14.15(7401)(2)(a)(iv), conspiracy to deliver less than 50 grams of cocaine, MCL 333.7401(2)(a)(iv); MSA 14.15(7401)(2)(a)(iv), and of being an habitual offender, second offense, MCL 769.10; MSA 28.1082. Prior to sentencing, defendant moved for a new trial claiming ineffective assistance of counsel. At the hearing on the motion for new trial, the prosecutor and defendant reached a plea agreement whereby defendant would withdraw her motion for a new trial, permit the guilty verdict on the delivery charge to stand, and give up her rights to any appeal of the jury verdict in exchange for the prosecutor vacating the conspiracy conviction and dismissing the supplemental information charging conspiracy to deliver and the habitual offender charge. The trial court accepted the plea agreement and subsequently sentenced defendant to three to twenty years' imprisonment on the delivery of cocaine conviction. Defendant appeals as of right. We dismiss defendant's appeal.

Defendant acknowledges that she entered into an agreement with the prosecution under which her conspiracy to deliver cocaine conviction was vacated and the supplemental information and habitual offender charge were dismissed; however, she contends that the existing record does not support a finding that she knowingly, voluntarily, and intelligently waived her constitutional right to appeal. We disagree.

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

The Michigan Constitution secures a criminal defendant's right to appeal a criminal conviction and sentence, Const 1963, art 1, § 20; however, the right to appeal, like other constitutional or statutory rights, is not absolute. *People v Rodriguez*, 192 Mich App 1, 5; 480 NW2d 287 (1991). Indeed, a defendant may voluntarily and knowingly waive the right to appeal. *People v Reid*, 420 Mich 326, 331; 362 NW2d 655 (1984). However, before a trial court can accept a plea agreement conditioned on a defendant's waiver of the right to appeal, the court must determine that such waiver is voluntary, knowing and intelligent. *Rodriguez, supra* at 6. In making this determination, "the court must consider all the relevant facts and circumstances surrounding the waiver, including the nature and terms of the agreement and the age, experience, and background of the defendant." *Id.*

Here, defendant argues that she is entitled to a new trial because the trial court failed to inquire into her age, experience or background to determine whether the waiver of her right to appeal was voluntary, knowing, and intelligent. Notably, however, defendant does not argue that any of these factors prevented her from making a knowing, intelligent and voluntary waiver, and nothing in the record shows that defendant was incapable of making a valid waiver. To the contrary, the record discloses that defendant was present when the prosecutor explained the plea agreement to the trial court and that defendant had no objections to the substance of the agreement. Moreover, after the agreement was placed on the record, the trial court addressed defendant directly and explained her rights to her. Specifically, the trial court confirmed that defendant understood that she had the right to continue the hearing on the motion for a new trial, that pursuant to the agreement she would be sentenced on the delivery of cocaine conviction which has a maximum penalty of twenty years' imprisonment and up to a \$25,000 fine, that the supplemental information charging conspiracy to deliver cocaine charge would be dismissed, that the conspiracy to deliver cocaine conviction would be vacated, and that she would not be sentenced as an habitual offender. Defendant unequivocally responded that she understood her rights and the potential penalty she faced.

Thereafter, the following colloquy occurred between the trial court and defendant:

THE COURT: Now, with that understanding and understanding that you are giving up the right to appeal that you would have, if you went through the hearing and proceeded through on the procedure as it was going forward and were convicted on the two charges, you would be giving up the right to appeal that you would have. And the court has also been advised that you would be giving up the right to ask for leave to appeal, that you would be giving up your appellate rights. Is that your understanding as well?

DEFENDANT: Yes, sir. I have no—I don't want to drag this out any longer. I understand it.

Finally, defense counsel confirmed at the motion hearing and again at sentencing that defendant understood her rights, that she consented to the terms of the plea agreement, and that she agreed to comply with the terms therein.

On this record, we find that the trial court made the appropriate inquiry into whether defendant fully understood her rights and whether defendant's waiver of her right to appeal was knowing,

voluntary and intelligent. The trial court's remarks on the record and the dialogue between the court and defendant support the conclusion that when defendant entered into the plea agreement and waived her right to appeal she was fully aware of the consequences of that agreement. Accordingly, pursuant to the terms of defendant's plea agreement, we dismiss the instant appeal. In light of this decision, we do not reach the other issues defendant raised on appeal.

Appeal dismissed.

/s/ Richard A. Griffin

/s/ Kurtis T. Wilder

/s/ Robert J. Danhof