

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

FRANK VELIZ,

Defendant-Appellant.

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UNPUBLISHED

January 18, 2007

No. 265049

Oakland Circuit Court

LC No. 2003-188878-FC

Before: Saad, P.J., and Cavanagh and Schuette, JJ.

PER CURIAM.

Defendant appeals as of right his convictions from a plea of *nolo contendere*<sup>1</sup> to first-degree criminal sexual conduct (CSC I), MCL 750.520(b)(1)(a) (sexual penetration with another person under 13 years of age), and second-degree criminal sexual conduct (CSC II), MCL 750.520(c)(1)(a) (sexual contact with another person under 13 years of age). Defendant was sentenced to 10 to 30 years' imprisonment for the CSC I conviction and 5 to 15 years' imprisonment for the CSC II conviction. We affirm.

On appeal, defendant argues that the trial court erred in denying his motion to suppress his statements to police because the police failed to provide *Miranda* warnings<sup>2</sup> before their custodial interrogation of him. “[A] guilty plea waives many potential defenses, including issues regarding the denial of a motion to suppress evidence . . . .” *People v Lannom*, 441 Mich 490, 493; 490 NW2d 396 (1992), citing *People v New*, 427 Mich 482, 493; 398 NW2d 358 (1986). Moreover, “[A] plea of *nolo contendere* has the same effect upon a defendant’s ability to raise an issue on appeal as does a plea of guilty.” *Id.* Here, because defendant pleaded *nolo contendere* to the charges against him, he has waived this issue on appeal.

Defendant next argues that his plea was involuntary. We disagree. To preserve the issue of whether a plea is voluntarily made, a defendant must move to withdraw the plea in the trial court. MCR 6.311(C); *People v Nowicki*, 213 Mich App 383, 385; 539 NW2d 590 (1995).

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<sup>1</sup> Defendant’s plea was made pursuant to a *Cobbs* agreement. See *People v Cobbs*, 443 Mich 276; 505 NW2d 208 (1993).

<sup>2</sup> See *Miranda v Arizona*, 384 US 436; 86 S Ct 1602; 16 L Ed 2d 694 (1966).

However, the failure to withdraw a plea in the trial court waives this issue for appeal. *People v Beasley*, 198 Mich App 40, 42-43; 497 NW2d 200 (1993). Defendant failed to move to withdraw his plea below, and has, thus, waived this issue. Nevertheless, we note that defendant has based his argument entirely on facts not contained in the lower court record. Given that it is impermissible to expand the record on appeal, we are completely unable to review this issue in light of defendant's arguments on appeal. *People v Powell*, 235 Mich App 557, 561 n 4; 599 NW2d 499 (1999). Notwithstanding this, we note that when tendering his plea, defendant expressly waived his right to a jury trial and noted that his plea was knowing and voluntary. Thus, defendant's claim fails.

Defendant next argues that the prosecution violated the Supreme Court's holding in *Brady v Maryland*, 373 US 83; 83 S Ct 1194; 10 L Ed 2d 215 (1963), as well as MRPC 3.8(a). "Where the claim sought to be appealed involves only the capacity of the state to prove defendant's factual guilt, it is waived by a plea of guilty or nolo contendere." *New, supra*. Thus, because a *Brady* claim is an evidentiary claim and MRPC 3.8(a) prohibits a prosecutor from prosecuting a defendant without probable cause, defendant has waived these claims on appeal.

Defendant next argues that he was denied the effective assistance of counsel in tendering his plea of nolo contendere. However, "[w]here the alleged deficient actions of defense counsel relate to issues that are waived by a valid unconditional guilty plea, the claim of ineffective assistance of counsel relating to those actions is also waived." *People v Vonins (After Remand)*, 203 Mich App 173, 176; 511 NW2d 706 (1993). As noted above, defendant admitted below that his plea was voluntary. Thus, defendant has also waived whether he was denied the effective assistance of counsel as it relates to that issue. *Id.*

Defendant next argues that he was arrested without probable cause or proper complaint and warrant due to a conspiracy of the victim and his ex-wife to defraud him of assets. A defendant's plea of nolo contendere constitutes a waiver of any defect in the complaint or warrant against defendant. *People v Bulger*, 462 Mich 495, 517 n 7; 614 NW2d 103 (2000), overruled in part on other grounds *Halbert v Michigan*, 545 US 605; 125 S Ct 2582; 162 L Ed 2d 552 (2005). Thus, defendant has waived this issue on appeal.

Nevertheless, we note that defendant participated in a telephone conversation with the victim during which defendant admitted "touching and fondling" the victim, grabbing one of her breasts, molesting and penetrating her, and watching inappropriate television programs with her. In addition, defendant made incriminating statements during his interview with police. From these admissions, police had probable cause to believe defendant committed a felony. Therefore, defendant's arrest was proper. See *People v Thomas*, 191 Mich App 576, 579; 478 NW2d 712 (1991) ("A police officer may arrest without a warrant if he has reasonable (or probable) cause to believe that a felony has been committed and that the suspect committed the felony"); see, also, MCL 764.15.

Affirmed.

/s/ Henry William Saad  
/s/ Mark J. Cavanagh  
/s/ Bill Schuette