

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

UNPUBLISHED
December 5, 2013

v

ANTHONY CRAIG WEST,

Defendant-Appellant.

No. 309821
Wayne Circuit Court
LC No. 09-010589-FC

Before: TALBOT, P.J., and FITZGERALD and WHITBECK, JJ.

PER CURIAM.

In a September 19, 2012 order, this panel denied defendant's delayed application for leave to appeal for failure to meet the burden of establishing entitlement to relief under MCR 6.508(D). In an October 28, 2013 order, the Supreme Court remanded the matter to this Court for reconsideration of the delayed application for leave to appeal under the standard applicable to direct appeals. The Supreme Court determined that defendant's former appellate counsel had failed to timely file a motion to withdraw the plea, and failed to file a delayed application for leave to appeal within the deadlines of MCR 7.205(F), depriving defendant of his direct appeal as a result of constitutionally ineffective assistance of appellate counsel. Using the standards applicable to direct appeals, we now deny the delayed application for leave to appeal for lack of merit in the grounds presented.

Pursuant to a plea bargain, defendant pleaded guilty to second-degree murder and felony-firearm. On October 21, 2009, he was sentenced as a third habitual offender to twenty to forty years' imprisonment for murder and two years' for felony-firearm. Although defendant filed a timely request for the appointment of appellate counsel, an application for leave to appeal was not filed.

In his motion for relief from judgment, defendant argued that he was denied the effective assistance of counsel, and he should be allowed to withdraw his plea because he is actually innocent and was coerced by counsel into accepting the plea. The trial court denied the motion, finding that the record showed that defendant's plea was voluntarily, knowingly, and understandingly made, and defendant failed to show that trial counsel was ineffective.

Applying the standard for direct appeals rather than the good cause and actual prejudice standard, defendant still has not established that he is entitled to relief. By pleading guilty, defendant waived any ineffective assistance of counsel claims related to the prosecution's ability

to prove factual guilt. *People v Bordash*, 208 Mich App 1; 527 NW2d 17 (1994). The trial court did not err in finding that the record established that the plea was voluntarily, knowingly, and understandingly made. The plea was fully explained to defendant, and he supplied a factual basis that supported the charges. There is no showing that counsel was ineffective in obtaining a plea bargain under which a first-degree murder charge was dismissed. Defendant's claim of innocence is negated by the admissions he made in entering a guilty plea. Had defendant filed a timely motion to withdraw the plea, it likely would have been denied. Had appellate counsel filed a timely application for leave to appeal, it likely would have been denied for lack of merit in the grounds presented.

We deny the delayed application for leave to appeal for lack of merit in the grounds presented.

/s/ Michael J. Talbot
/s/ E. Thomas Fitzgerald
/s/ William C. Whitbeck