

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

THOMAS D. FROST,

Defendant-Appellant.

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UNPUBLISHED

July 25, 1997

No. 196867

Oakland Circuit Court

LC No. 93-129475 FH

Before: Jansen, P.J., and Wahls and P.R. Joslyn\*, JJ.

MEMORANDUM.

Defendant pleaded guilty to possession with intent to deliver less than 50 grams of cocaine, MCL 333.7401(1) and (2)(a)(iv); MSA 14.15(7401)(1) and (2)(a)(iv), possession of diazepam, MCL 333.7403(1) and (2)(b); MSA 14.15(7403)(1) and (2)(b), felon in possession of a firearm, MCL 750.224f; MSA 28.421(6), possession of marijuana, MCL 333.7403(1) and (2)(d); MSA 14.15(7403)(1) and (2)(d), possession of fireworks, MCL 750.243a; MSA 28.440(1), and two counts of felony-firearm, MCL 750.227b; MSA 28.424(2). He was then sentenced on his possession with intent to deliver less than 50 grams of cocaine conviction to an enhanced term of two to forty years imprisonment as a second drug offender, MCL 333.7413(2); MSA 14.15(7413)(2), on his possession of diazepam conviction to an enhanced term of one to four years imprisonment as a second drug offender, on his felon in possession of a firearm conviction to an enhanced term of one to ten years imprisonment as a third offender, MCL 769.11; MSA 28.1083, on his possession of marijuana conviction to a term of one year's incarceration, on his possession of fireworks conviction to a term of ninety days incarceration, and on his felony-firearm convictions to two terms of two years imprisonment. Defendant appeals as of right. We affirm. This case is being decided without oral argument pursuant to MCR 7.214(E).

Defendant argues that he was entitled to resentencing because the resentencing judge was not the same judge that accepted his pleas and that imposed his original sentences. Generally, a defendant should be sentenced by the judge who accepted the defendant's guilty pleas, provided that the judge is reasonably available. *People v Pierce*, 158 Mich App 113, 115; 404 NW2d 906 (1987). The judge

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

who accepted defendant's pleas and who imposed the original sentences was not reasonably available to resentence defendant where that judge was a visiting judge who was no longer assigned to Oakland County's special "Drug Court" at the time of resentencing and, therefore, who lacked the authority to act as a circuit judge in the Oakland Circuit Court at time of resentencing. *People v Van Auker (Aft Rem)*, 132 Mich App 394, 399; 347 NW2d 466 (1984), rev'd in part on other grds 419 Mich 918 (1984). Resentencing is not required.

Defense counsel did not render ineffective assistance by failing to request that defendant be resentenced by the judge who imposed the original sentences, in light of that judge's unavailability. *People v Stanaway*, 446 Mich 643, 687-688; 521 NW2d 557 (1994).

Defendant has waived appellate review of his claims that the trial court failed to comply with MCR 6.302 before accepting those pleas. MCR 6.311(C); *People v Beasley*, 198 Mich App 40, 43; 497 NW2d 200 (1993). Moreover, counsel did not render ineffective assistance by failing to move to withdraw defendant's pleas. Having reviewed the record, we are persuaded that defendant's pleas were tendered knowingly and voluntarily. *People v Bordash*, 208 Mich App 1, 2-3; 527 NW2d 17 (1994).

Affirmed.

/s/ Kathleen Jansen  
/s/ Myron H. Wahls  
/s/ Patrick R. Joslyn