

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JOSE RODRIGUEZ VILLARREAL,

Defendant-Appellant.

UNPUBLISHED
September 18, 2003

No. 240203
Genesee Circuit Court
LC No. 94-050001-FC

Before: Smolenski, P.J., and Murphy and Wilder, JJ.

MEMORANDUM.

Defendant appeals as of right his plea-based conviction for delivery of more than 225 grams but less than 650 grams of cocaine, MCL 333.7401(2)(a)(ii). We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

On appeal, defendant argues that he was denied the effective assistance of counsel when his attorney failed to schedule a timely hearing on his motion to suppress. An unconditional guilty plea waives all claims regarding the capacity of the state to prove factual guilt. *People v New*, 427 Mich 482, 491; 398 NW2d 358 (1986). And a plea waives issues regarding the denial of a motion to suppress evidence. *People v Lannom*, 441 Mich 490, 493; 490 NW2d 396 (1992). A defendant also waives ineffective assistance of counsel claims by unconditionally pleading guilty where the issues relate solely to the state's capacity to prove factual guilt. *People v Vonins (After Remand)*, 203 Mich App 173, 175-176; 511 NW2d 706 (1993). Therefore, we hold that defendant waived any ineffective assistance of counsel claim related to counsel's failure to properly present his motion to suppress.

Affirmed.

/s/ Michael R. Smolenski
/s/ William B. Murphy
/s/ Kurtis T. Wilder