

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

KEITH BLAKE SMITH, a/k/a KEVIN JOHNSON

Defendant-Appellant.

UNPUBLISHED

June 24, 1997

No. 184552

Recorder's Court

LC No. 94-13879

Before: Saad, P.J., and Hood and McDonald, JJ.

MEMORANDUM.

Defendant pled guilty to possession of cocaine over 50 grams, MCL 333.7403(2)(a)(3), and now appeals claiming ineffective assistance of counsel and seeking to overturn the trial court's refusal to allow defendant to withdraw his guilty plea. Contrary to defendant's first argument on appeal, it is not per se ineffective assistance of counsel to allow a defendant to plead guilty to an offense carrying a statutorily mandated minimum punishment. *People v Haynes*, 221 Mich App ___; ___ NW2d ___ (No. 190360, February 14, 1997). Defendant makes no claim that in any pertinent respect his plea was involuntary or less than understanding. *People v Bordash*, 208 Mich App 1; 527 NW2d 17 (1994), conflict panel refused 208 Mich App 801; 527 NW2d 19 (1994).

Nor does the existing factual record support a claim of ineffective assistance of counsel. Although the trial court failed to make an inquiry concerning the existence of any plea bargain at the time of the plea taking, at sentencing it was revealed that charges in a second case were being dismissed in exchange for defendant's plea. Defendant does not identify any aspect of his counsel's performance which deviated below an objective standard of reasonableness. With respect to defense counsel's decision not to allocute at sentencing, defendant makes no current claim that a valid basis for a downward departure from the statutorily mandated sentence could have been advanced, and thus defendant has failed to establish the prejudice prerequisite to appellate relief on a claim of ineffective assistance of counsel in that respect. *People v Pickens*, 446 Mich 298; 521 NW2d 797 (1994). To the contrary, where this offense was committed while defendant was on absconder status from a previous probationary sentence for possession of cocaine, the totality of circumstances would fail to

support the existence of objective and verifiable factors warranting a downward departure sentence. *People v Fields*, 448 Mich 58; 528 NW2d 176 (1995).

Defendant's asserted basis for withdrawing his plea was his failure to receive the sentence promised by his attorney, lifetime probation. However, the record of the plea taking contradicts defendant's subsequent testimony in support of his motion to withdraw the plea. At the plea taking, defendant denied any promises of leniency or other inducements and the court advised him that he was, by virtue of his conviction, subject to a mandatory penalty of 10 to 20 years imprisonment, to be served consecutively to that for his prior felony of possession of cocaine. Defendant's reliance on *People v Sledge (On Rehearing)*, 200 Mich App 326; 503 NW2d 672 (1993), is misplaced, as *Sledge* has been deprived of precedential value. *People v Sledge*, 444 Mich 863; 521 NW2d 606 (1993). On this record, defendant's claim that a promise of leniency was made to induce his plea must be rejected. *People v Haynes, supra*. The trial court accordingly did not abuse its discretion in denying defendant's motion to withdraw his plea. *People v Effinger*, 212 Mich App 67; 536 NW2d 809 (1995).

Affirmed.

/s/ Henry William Saad

/s/ Harold Hood

/s/ Gary R. McDonald