

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

VINCENT ROBERTSON,

Defendant-Appellant.

UNPUBLISHED

November 25, 2003

No. 241264

Wayne Circuit Court

LC No. 99-005987

Before: Murray, P.J., and Gage and Kelly, JJ.

PER CURIAM.

Defendant appeals by delayed leave granted from a circuit court order denying his motion for relief from judgment. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant was charged in this case with first-degree home invasion, MCL 750.110a(2), and in another case with breaking and entering a motor vehicle, MCL 750.356a(3). Pursuant to a plea bargain and sentence agreement, defendant pleaded guilty to the home invasion charge, for which he was to serve a five-year minimum sentence and pay restitution. In exchange, the prosecutor dismissed the breaking and entering charge and a request for sentence enhancement as an habitual offender, fourth offense, MCL 769.12.

After defendant's delayed application for leave to appeal was denied, defendant filed a motion for relief from judgment, claiming that he had been sentenced on the basis of inaccurate information in the presentence report and that the plea bargain was illusory. The trial court denied relief.

A judgment of conviction and sentence not subject to appellate review may be reviewed only by a motion for relief from judgment. MCR 6.501. The defendant has the burden of establishing a right to the relief requested in the motion. MCR 6.508(D). The court may not grant relief if the motion seeks relief on grounds that could have been raised on direct appeal unless the defendant (1) shows good cause for the failure to raise such grounds on appeal, and (2) shows actual prejudice from the alleged errors. MCR 6.508(D)(3)(a), (b). When the defendant challenges his sentence, "actual prejudice" means that the sentence was invalid. MCR 6.508(D)(3)(b)(iv). If the defendant fails to establish actual prejudice, it is unnecessary to determine whether the good cause factor has been met. *People v Jackson*, 465 Mich 390, 405; 633 NW2d 825 (2001), mod 465 Mich 1209 (2001). The court's ruling on a motion for relief

from judgment is reviewed for an abuse of discretion. *People v Ulman*, 244 Mich App 500, 508; 625 NW2d 429 (2001).

A defendant has a “due process right to be sentenced on the basis of accurate information.” *People v Mitchell*, 454 Mich 145, 173; 560 NW2d 600 (1997). The presentence report indicated that defendant was on probation for another offense. That information was correct and defendant admitted as much at the time he tendered his plea. However, in responding to defendant’s expression of his dissatisfaction with the sentence agreement, the court misspoke and stated that defendant was on probation at the time he committed the instant offense. That mistake is of no consequence because it was not a factor relied on by the court in passing sentence. Rather, the court relied on the plea bargain and imposed the sentence agreed to by the parties.

The crux of defendant’s claim is that the plea bargain was illusory because the sentence agreement was based on a miscalculation of the guidelines. This claim is not borne out by the record. According to defense counsel’s statements at sentencing, the sentence agreement was based on a determination that the guidelines were thirty-six to sixty months. That score was correct, but the probation department erred in scoring the guidelines when it prepared the sentence information report. That error was corrected to reflect the actual guidelines range. Defendant tendered a plea in consideration for a five-year minimum sentence, which sentence was within the guidelines, and received the benefit of the bargain. Therefore, the sentence was not invalid and defendant has not shown actual prejudice entitling him to relief. The trial court did not abuse its discretion in denying defendant’s motion for relief from judgment. *Ulman, supra*.

Affirmed.

/s/ Christopher M. Murray
/s/ Hilda R. Gage
/s/ Kirsten Frank Kelly