

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

PAUL ANTHONY WALCHAK,

Defendant-Appellant.

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UNPUBLISHED

December 21, 2004

No. 249839

Presque Isle Circuit Court

LC Nos. 02-091990-FH

02-091996-FH

02-091997-FH

Before: Murphy, P.J., and White and Kelly, JJ.

MEMORANDUM.

Defendant appeals as of right his convictions of three counts of second-degree home invasion, MCL 750.110a(3), and one count of breaking and entering a building with intent to commit a felony, MCL 750.110, entered after a jury trial. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant was charged with twenty-two felonies arising out of a series of home invasions in Presque Isle, Montmorency, and Alpena Counties. He pleaded guilty to twenty-one charges in return for concurrent minimum sentences of five years for the most serious offenses. Subsequently, and against the advice of counsel, defendant sought to withdraw his pleas. The Presque Isle County prosecutor did not object. The trial court took the motion under advisement and remanded defendant for a second forensic examination. Subsequently, the trial court granted defendant's motion to withdraw his pleas to the Presque Isle County cases, only. A jury convicted defendant of three counts of second-degree home invasion and one count of breaking and entering with intent to commit a felony.

When moving to withdraw a plea before sentence is imposed, a defendant must show that withdrawal of the plea is in the interest of justice by articulating a fair and just reason for withdrawal of the plea. MCR 6.310(B); *People v Wilhite*, 240 Mich App 587, 594; 618 NW2d 386 (2000). If the defendant carries his burden, the prosecution must establish that withdrawal of the plea would result in substantial prejudice by showing that its ability to prosecute the case would be hampered. *People v Thew*, 201 Mich App 78, 81; 506 NW2d 547 (1993). We review a trial court's decision on a motion to withdraw a plea for an abuse of discretion. *People v Kennebrew*, 220 Mich App 601, 605; 560 NW2d 354 (1996).

Defendant seeks reversal of his convictions on the ground that the trial court abused its discretion by granting his motion to withdraw his pleas of guilty. A party cannot waive objection to an issue before the trial court and then raise the issue as an error on appeal. *People v Aldrich*, 246 Mich App 101, 111; 631 NW2d 67 (2001). Defendant moved to withdraw his pleas in the trial court, and the trial court granted his motion. Defendant received the relief he requested. No abuse of discretion occurred. *Id.*

Furthermore, we reject defendant's argument that the trial court abused its discretion by allowing him to proceed *in propria persona* without advising him of the consequences of doing so. Defense counsel considered defendant's motion to withdraw his pleas to be without sufficient basis, and declined to make the motion for that reason. However, counsel took pains to advise defendant of the consequences of withdrawing the pleas and proceeding to trial. Defendant did not proceed without counsel, but rather sought to withdraw his pleas against the advice of counsel. He cannot now claim that the trial court abused its discretion by granting him the requested relief. *Id.*

Affirmed.

/s/ William B. Murphy  
/s/ Helene N. White  
/s/ Kirsten Frank Kelly