

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of DARIUS TAMAAJH GRAHAM,
Minor.

PEOPLE OF THE STATE OF MICHIGAN,

Petitioner-Appellee,

v

DARIUS TAMAAJH GRAHAM,

Respondent-Appellant.

UNPUBLISHED

October 4, 2007

No. 273836

Wayne Circuit Court

Family Division

LC No. 03-419603-DL

Before: Bandstra, P.J., and Talbot and Fort Hood, JJ.

PER CURIAM.

Respondent, a juvenile, appeals as of right from the trial court's dispositional order following his plea of admission to possession of less than 25 grams of cocaine, MCL 333.7403(2)(a)(v). We affirm.

As a factual basis for his plea, respondent admitted that he had cocaine in his room that he put behind his dresser.

Respondent contends that the trial court erred in accepting his "unintelligent plea" because the court failed to ensure that it was accurate or based on sworn or otherwise truthful testimony. This argument is founded on the following colloquy that occurred after the trial court advised respondent of his rights but before the court established a factual basis for the plea:

THE CLERK: Do you swear or affirm that the testimony you are about to give will be the truth, nothing but the truth, so help you God?

[RESPONDENT]: No, ma'am.

Respondent did not raise this issue below in a motion to withdraw his plea pursuant to MCR 3.941(D), or by moving for rehearing pursuant to MCR 3.992. In fact, after the trial court asked respondent the questions to establish the factual basis for the plea, respondent's attorney specifically expressed her satisfaction with the proceedings and the "trial rights given by the Court." By affirmatively expressing satisfaction with the proceedings, respondent waived this issue on appeal. *People v Carter*, 462 Mich 206, 219; 612 NW2d 144 (2000), reh den 463 Mich

1210 (2000). Regardless, the negative response was harmless unless respondent subsequently provided false testimony when the trial court elicited the factual basis for the plea. There is no basis in the record for concluding, nor does respondent assert on appeal, that respondent's testimony at the plea hearing was false.

Respondent also claims that he received ineffective assistance of counsel because counsel failed to move to withdraw respondent's plea "when clearly [he] did not have an intelligent understanding of his plea agreement."

Respondent's failure to request an evidentiary hearing limits our review to errors apparent on the record. *In re Ayres*, 239 Mich App 8, 23; 608 NW2d 132 (1999). Respondent must show that counsel's performance fell below an objective standard of reasonableness and he must overcome the presumption that the challenged action might be considered sound trial strategy. *Id.*, at 21. He must also show how a reasonable probability that, but for counsel's unprofessional errors, the result would have been different. *People v Hoag*, 460 Mich 1, 9; 594 NW2d 57 (1999). Counsel is not ineffective for failing to make frivolous or meritless motions. *People v Gist*, 188 Mich App 610, 613; 470 NW2d 475 (1991).

Respondent has not shown that counsel erred in failing to move to withdraw the plea on the basis that the transcript showed a negative response when respondent was being sworn in. There is no basis to conclude that the motion would have been successful had it been filed.

We affirm.

/s/ Richard A. Bandstra
/s/ Michael J. Talbot
/s/ Karen M. Fort Hood