

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE CITY OF WESTLAND,

Plaintiff-Appellant,

v

TODD STEPHEN CACCAMO,

Defendant-Appellee.

UNPUBLISHED
February 15, 2005

No. 255336
Wayne Circuit Court
LC No. 03-500089-FM

Before: Kelly, P.J., and Saad and Smolenski, JJ.

PER CURIAM.

The prosecution appeals by leave granted the circuit court's order reversing the 18th District Court's order denying defendant's motion to withdraw his plea of nolo contendere for a violation of a misdemeanor domestic violence ordinance, Westland City Code, Section 68-67(a). We vacate the circuit court order and reinstate the district court order.

The prosecution argues that the circuit court erred in reversing the district court's order denying defendant's motion to withdraw his plea of nolo contendere. The circuit court ruled that the district court failed to make a determination regarding the voluntariness of defendant's plea of nolo contendere as required by MCR 6.610(E). We review for an abuse of discretion a trial court's ruling on a motion to withdraw a plea. *People v Wilhite*, 240 Mich App 587, 594; 618 NW2d 386 (2000). A trial court abuses its discretion when an unprejudiced person, considering the facts on which the trial court acted, would conclude that there was no justification or excuse for the ruling. *People v Ullah*, 216 Mich App 669, 673; 550 NW2d 586 (1996).

Based on our review of the record, we conclude that the district court complied with the requirements of MCR 6.610(E) in taking defendant's plea. Contrary to the ruling of the circuit court, the Michigan Supreme Court held that a court's determination that a plea was made "understandingly and voluntarily" is not required to be made in "any particular manner." *Guilty Plea Cases*, 395 Mich 96, 126; 235 NW2d 132 (1975). Rather,

The judge's determination that the plea is freely, understandingly and voluntarily made may be concluded from the judge's acceptance of the plea even though he makes no separate finding of fact on this issue. [*Id.*]

The record reflects the that district court explicitly and repeatedly questioned defendant about his understanding and desire to make a nolo contendere plea. The court also properly informed defendant of the consequences of his plea and its treatment by the court “as if you plead[ed] guilty.” Defendant clearly and consistently indicated his agreement with the proceedings and the plea of nolo contendere. At sentencing, defense counsel indicated that defendant knowingly waived his rights to trial and made a conscious decision to proceed with entry of the plea. Therefore, we conclude that the trial court properly determined that defendant’s plea was “understanding, voluntary, and accurate.” MCR 6.610(E).

We also disagree with defendant’s contention that there was a discrepancy regarding whether the trial court accepted defendant’s plea. At the plea hearing, defense counsel voiced his misunderstanding that, “When your Honor calls this a sentence, that you’re not going to accept his plea and – and as such, you’re going to take the matter under advisement for a certain period of time.” To which the district court replied, “That is not – that’s not our procedure at all.” Thereafter, the trial court clearly stated:

All right. I’m going to read the incident report 03-4236 for a factual basis.
All right. I’m satisfied there is a factual basis for these charges. I will accept the no contest plea. I assume the no contest is because of civil – potential liability, is that correct?

Furthermore, “[b]y sentencing the defendant the judge implicitly accepted the plea.” *Guilty Plea Cases, supra* at 126. At the sentencing hearing, the district court provided defendant with an opportunity to speak before being sentenced. But defendant elected not to speak.

After the district court accepted defendant’s plea and sentenced defendant, defendant’s newly retained counsel filed a motion to set aside the plea arguing that defendant’s prior counsel misled defendant regarding the ability to withdraw the plea. When the district court permitted defendant to express his reasons for seeking to withdraw his plea, he stated, “The biggest concern . . . this woman is not letting this thing go.” Defendant also expressed his concern with the potential recommendations that would be made by the domestic violence class instructors. Defendant stated, “other counsel has said that basically unless you go to this class and admit that you’re a monster then they make these recommendations – that you could be taking classes for the next year, your Honor.”

Despite the contentions of defense counsel in the circuit court and defendant’s contentions on appeal, this record indicates that defendant, after entering his plea, became concerned with collateral consequences and his sentence to attend a domestic violence class. “Requests to withdraw pleas are generally regarded as frivolous where circumstances indicate that the true motivation behind the motion is sentencing concerns.” *People v Ward*, 459 Mich 602, 614; 594 NW2d 47 (1999), corrected by 460 Mich 1204 (1999). We conclude that the district court did not err in denying defendant’s motion to withdraw his plea of nolo contendere.

The circuit court order is vacated and the district court ruling is reinstated. We do not retain jurisdiction.

/s/ Kirsten Frank Kelly
/s/ Henry William Saad
/s/ Michael R. Smolenski