STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

TEODORO YLAYA TERO,

Defendant-Appellant.

UNPUBLISHED
August 13, 1996

No. 178562
LC No. 93-000858-FC

Before: Kavanagh, T.G.,* P.J., and R.B. Burns** and G.S. Allen,** JJ.

MEMORANDUM.

Defendant pleaded guilty to second-degree murder, MCL 750.317; MSA 28.549, and was sentenced to twenty-five to fifty years' imprisonment. He appeals as of right. We affirm. This case has been decided without oral argument pursuant to MCR 7.214(A).

Defendant raises multiple arguments on why he should be permitted to have this matter remanded to the trial court so that he can move to withdraw his plea. Although defendant did not move to withdraw his plea in the trial court, he made a motion to remand in this Court which was denied without prejudice. *People v Corteway*, 212 Mich App 442, 447; 538 NW2d 60 (1995), lv pending. We decline to remand this matter to the trial court for further proceedings.

The factual basis offered for defendant's plea was adequate for the trial court to accept defendant's plea to second-degree murder. *People v Delrita Jones*, 190 Mich App 509, 511-512; 476 NW2d 646 (1991). Defendant's recitation of the facts supported finding that he committed

*Former Supreme Court Justice, sitting on the Court of Appeals by assignment pursuant to Administrative Order 1996-3.
**Former Court of Appeals Judges, sitting on the Court of Appeals by assignment pursuant to Administrative Order 1996-3.

second-degree murder rather than voluntary manslaughter because there was no evidence of adequate provocation. *People v Pouncey*, 437 Mich 382, 388-390; 471 NW2d 346 (1991).

The plea bargain made in this case was not illusory. The evidence at the preliminary examination supported the original charge of first-degree murder. Therefore, we cannot say that the reduction of the charge to second-degree murder was not a genuine benefit to defendant. *People v Gonzalez*, 197 Mich App 385, 391; 496 NW2d 312 (1992).

Finally, defendant has not established that his plea was not voluntarily and knowingly entered because he did not fully comprehend the sentence recommendation. Defendant claims that he thought that a twenty-five year cap on his sentence applied to the maximum sentence rather than the minimum sentence. At the plea hearing, there only was reference to a twenty-five year cap on the sentence. Nonetheless, defense counsel argued for a sentence of twenty-five to fifty years' imprisonment at the time of sentencing. Defendant did not voice any confusion or disagreement with his counsel's argument. We therefore do not believe that the record supports defendant's claim that he did not fully comprehend the sentence recommendation. *People v Thew*, 201 Mich App 78, 82; 506 NW2d 547 (1993).

Affirmed.

/s/ Thomas G. Kavanagh
/s/ Robert B. Burns
/s/ Glenn S. Allen, Jr.