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STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED October 12, 2026 10:01 AM
v	No. 375481 Menominee Circuit Court
JEFFREY WAYNE TOMES, Defendant-Appellant.	LC No. 2022-004504-FH

Before: BORRELLO, P.J., and BAZZI and LIEVENSE, JJ.

PER CURIAM.

Defendant, Jeffrey Wayne Tomes, appeals by leave granted[1] his plea-based conviction of possession with intent to deliver methamphetamine, MCL 333.7401(2)(b)(*i*), for which he was sentenced to 6 to 20 years' imprisonment. On appeal, Tomes challenges the trial court's denial of his motion to withdraw his guilty plea. We vacate and remand for further proceedings consistent with this opinion.

I. BASIC FACTS AND PROCEDURAL HISTORY

This case arises from Tomes's possession of large quantities of methamphetamine. In November 2022, he received a package containing 447.9 grams of methamphetamine, which he knowingly possessed with the intent to deliver to others. He was initially charged with two counts of possession with intent to deliver methamphetamine; two counts of possession of a taser, MCL 750.224a; one count of maintaining a drug house, MCL 333.7405(1)(d); and four counts of carrying a firearm during the commission of a felony (felony-firearm), MCL 750.227b. The felony-firearm charges were based on Tomes's possession of two pistols and two rifles "at the time [Tomes] committed or attempted to commit a felony, to-wit: PWID [possession with intent to deliver] Methamphetamine[.]"

[1] *People v Tomes*, unpublished order of the Court of Appeals, entered July 7, 2025 (Docket No. 375481).

Tomes was appointed counsel to represent him in the trial court proceedings. In December 2022, the prosecution noted that it made a plea offer to Tomes, which trial counsel summarized as Tomes "plead[ing] to two counts of possession with intent to deliver and then . . . all the other charges would be dismissed." Tomes waived his right to a preliminary examination based on the offer but continued to consider whether he would ultimately accept it. In January 2023, trial counsel reiterated on the record that the prosecution offered Tomes a plea deal "to plea[d] to[], two, Possession with Intent charges." While Tomes was "not rejecting the offer," he required more time to think about it and wanted trial counsel to review a search-warrant issue. Trial counsel subsequently moved to suppress the search warrant, and a hearing was held in April 2023. The day after the hearing, trial counsel sent Tomes a letter regarding the prosecution's plea offer, which stated:

> I was a little surprised by your comment yesterday to go to trial. I thought that if we didn't prevail on the Motion, that you would accept the offer.
>
> My concern is your decision to turn the offer down. Assuming we loses [sic] the Motion and go to trial, each felony firearm carries an automatic 2 years in prison consecutive to everything else. This means that if we go to trial and lose, you are looking at a mandatory 8 years before we even get started on the amount of time for sentencing on the other charges.
>
> It's the risk of the 8 years that I don't want you to gamble on. Please think about it. If there were no mandatory minimums, I'd be all about trying this case. You have more to lose than someone that doesn't have automatic mandatory minimums.
>
> Please think about it.

Shortly thereafter, trial counsel filed a motion to withdraw from representation based on Tomes's desire to terminate her legal services. Trial counsel identified several areas in which Tomes was dissatisfied, including the fact that "[t]he Jury Trial is on April 26, 2023 and counsel is asking Mr. Tomes to consider/accept the State's offer."

The trial court held a hearing at 8:34 a.m. the next day. Trial counsel explained that Tomes initially drafted and sent a letter to the trial court requesting new counsel. Upon receiving that communication, trial counsel drafted the motion to withdraw on Tomes's behalf but maintained she did not "have a position either way." The trial court denied the motion to withdraw, concluding that the reasons for Tomes's dissatisfaction were insufficient to establish good cause or a breakdown of the attorney-client relationship. Although not the basis for its decision, the court noted a rising trend of inmates at the Menominee County Jail filing last-minute motions for new counsel before going to trial on serious felony charges.

After the trial court issued its ruling, the prosecution noted that Tomes had a pending plea offer, which it summarized on the record as follows:

> I believe it was a plea to either Count 1 or Count 2, one of the two 20-year drug felonies, PWID. The balance of the charges, including several counts of felony firearm, which carry with it an additional, consecutive penalty of, upon conviction

> of course, ah, two years in prison consecutive to any penalty imposed for any other conviction which, you know, . . . a successful trial from my point of view, would include the 20-year felonies. So, whatever sentence the Court imposed on, on those convictions, there would be an additional two years, no good time. It runs consecutive too [sic] and before any second penalty would start.

Trial counsel confirmed that was also her "understanding of the offer[.]" While the prosecution agreed to "extend that offer to the close of business today," it would be withdrawn thereafter. The trial court concluded the hearing, noting that the prosecution's offer was extended to the end of the business day and directing trial counsel to score Tomes's sentencing guidelines with and without the offer in order for him to make an informed decision.

That afternoon at 3:37 p.m., the parties appeared back on the record and indicated that Tomes wished to accept the plea offer. Tomes agreed to plead guilty to Count 1 of the felony information, which charged him with possession with intent to deliver methamphetamine. In exchange, the prosecution agreed to dismiss the remaining charges. Upon receipt of a signed advice-of-rights form, the trial court advised Tomes of his rights, and he affirmed that he wished to accept the plea agreement, reviewed and understood his rights, entered the plea with his knowledge and consent, and made the plea freely and voluntarily. The court accepted Tomes's guilty plea and scheduled a date for sentencing. An order of *nolle prosequi* was subsequently entered, dismissing the remining charges against Tomes.

Following entry of the plea, trial counsel voluntarily withdrew from representation and Tomes was appointed substitute counsel. In July 2023, substitute counsel appeared on the record and requested that sentencing be adjourned for her to complete a review of the file and potentially move to withdraw Tomes's guilty plea. The trial court granted the request, directing that any motion to withdraw be filed before sentencing.

Tomes was sentenced in September 2023. At the hearing, substitute counsel stated: "I was assigned after the plea entry because of some issues that arose. We have discussed those, and at this point, we are prepared to proceed to sentencing." The trial court sentenced Tomes as noted above.

Represented by appellate counsel, Tomes subsequently moved to withdraw his guilty plea.[2] Tomes primarily advanced that his plea should be withdrawn based on ineffective assistance of trial counsel. Relevant to this appeal, Tomes argued that trial counsel was ineffective for advising him that his four felony-firearm charges would run consecutive to each other and could result in a mandatory eight-year minimum sentence. This incorrect advice constituted deficient performance,

[2] Before filing this motion with his current appellate counsel, two other attorneys were appointed to represent Tomes, both of whom moved to withdraw from representation based on a breakdown of the attorney-client relationship.

which prejudiced Tomes who relied on the advice when accepting his plea offer. Tomes requested that his plea be withdrawn, or that an evidentiary hearing be conducted in the alternative.[3]

The prosecution opposed the motion, arguing that it was untimely and that Tomes could not establish an error in the plea proceedings that would entitle him to withdraw his plea. Tomes filed a reply, arguing that his motion was timely and that trial counsel's documented error in advising him about his felony-firearm sentences constituted an error in the proceedings.

At the hearing on Tomes's motion to withdraw, the parties argued consistently with their briefs. Tomes emphasized that he was denied the effective assistance of counsel based on trial counsel's advice, which incorrectly assumed that multiple felony-firearm convictions would run consecutive to each other. The prosecution contended that Tomes was engaging in a fishing expedition because he was experiencing "buyers' remorse for his sentence." While it conceded that Tomes was correct about the concurrent nature of felony-firearm sentences, it also asserted that it was possible the erroneous advice was corrected before Tomes accepted the plea. The trial court ruled that the motion to withdraw was timely filed but indicated it would issue a written opinion on the remaining issues.

The trial court thereafter denied Tomes's motion to withdraw and request for an evidentiary hearing in an eight-page opinion and order. Notably, the trial court determined that Tomes failed to establish ineffective assistance of counsel based on trial counsel's felony-firearm sentencing advice. It reasoned:

> No case law is cited by Appellate Counsel in support of his position on this issue. In reading the statute and the case law, it does not appear that the advice provided to the defendant by defense counsel on the potential sentence was "objectively false." If the prosecutor at trial proved the elements of felony firearm with respect to each of the four weapons and a conviction on either or both of the PWID charges was also obtained, there is no case law that the court could find that says this would not result in four separate consecutive sentences. It also does not appear that it would be inconsistent with MCL 750.227b for the court to impose four consecutive mandatory sentences in this situation.

It also concluded that even if Tomes's advice was objectively false, it was corrected when the prosecution placed the plea offer on the record. Because Tomes could not establish ineffective assistance of counsel, he could not prove that his plea was involuntary.

Tomes moved for reconsideration of the trial court's order, arguing that the court palpably erred by determining the felony-firearm sentences could be imposed consecutively, which was contrary to *People v Clark*, 463 Mich 459; 619 NW2d 538 (2000). Further, trial counsel's deficient performance was not cured by the prosecution's recitation of the plea offer, and such a

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[3] Tomes raised several other arguments that are not relevant to this appeal, including challenges to the trial court's denial of his request for new counsel, his charges for possession of a taser and felony-firearm, and ineffective assistance of counsel based on a failure to investigate and pursue an interlocutory appeal regarding his motion to suppress.

determination improperly placed the burden on Tomes to identify the inconsistencies between the statements of trial counsel and the prosecution.

The trial court denied Tomes's motion, reasoning:

> *Clark* does not really provide the answer to the question in this case. In the instant matter, the defendant was charged with four felony-firearm counts, each had a predicate felony of possession with intent to deliver and each alleged in the information that it involved a different firearm. It is clear from *Clark* that if convicted of all the charged counts, the defendant could not be sentenced to a consecutive term on the counts that were not alleged to be predicate felonies. However, a court could still get to the "mandatory 8 years . . ." counsel warned Defendant about in her letter, if the counts of felony firearm are consecutive to each other.

The court also observed that while *People v Sawyer*, 410 Mich 531; 302 NW2d 534 (1981) stood for the proposition that felony-firearm sentences should be concurrent, the case was overruled by *People v Wilson*, 500 Mich 521; 902 NW2d 378 (2017). Further, the court held that the prosecution's recitation of the plea offer demonstrated that Tomes "was aware before he accepted the offer, that he would not be sentenced to 8 years mandatory for the felony firearm charges if he did not accept the offer." This appeal ensued.

II. GUILTY PLEA WITHDRAWAL

Tomes argues that the trial court erred by denying his motion to withdraw the plea because trial counsel's ineffective assistance with respect to advising him on the consequences of his felony-firearm sentences rendered his plea involuntary. We agree.

We review a trial court's decision on a motion to withdraw a guilty plea for an abuse of discretion. *People v Samuels*, 514 Mich 120, 128; 22 NW3d 304 (2024). "An abuse of discretion occurs when a trial court's decision results in an outcome that falls outside the range of principled outcomes, or when a trial court makes an error of law." *Id*. (citations omitted). "[T]o the extent that a decision implicates constitutional issues, this presents a question of law that is reviewed de novo." *Id*. at 128-129. "A claim of ineffective assistance of counsel presents a mixed question of fact and constitutional law." *People v Spears*, 346 Mich App 494, 502; 13 NW3d 20 (2023) (quotation marks and citation omitted). "All findings of fact are reviewed for clear error, while the legal questions are reviewed de novo." *Id*. at 503 (quotation marks and citation omitted). In the absence of an evidentiary hearing, "our review of this issue is limited to errors apparent from the record." *Id*.

"Defendants are entitled to the effective assistance of counsel when considering or negotiating a plea agreement." *People v White*, 331 Mich App 144, 148; 951 NW2d 106 (2020). In the context of plea bargaining, an ineffective-assistance claim is established "by showing (1) that counsel's representation fell below an objective standard of reasonableness, and (2) that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *People v Douglas*, 496 Mich 557, 592; 852 NW2d 587 (2014) (quotation marks and citation omitted). "When ineffective assistance of counsel is claimed in the

context of a guilty plea, the relevant inquiry is whether the defendant tendered the plea voluntarily and understandingly." *People v White*, 307 Mich App 425, 431; 862 NW2d 1 (2014). Further, "[i]n demonstrating prejudice, the defendant must show the outcome of the plea process would have been different with competent advice." *Douglas*, 496 Mich at 592 (quotation marks and citation omitted). "In other words, . . . the defendant must show that there is a reasonable probability that, but for counsel's errors, he would not have pleaded guilty and would have insisted on going to trial." *Hill v Lockhart*, 474 US 52, 59; 106 S Ct 366; 88 L Ed 2d 203 (1985).

"Guilty pleas have been found to be involuntary or unknowing on the basis of ineffective assistance of counsel where defense counsel failed to explain adequately the . . . consequences of the guilty plea," which "effectively renders the defendant's guilty plea involuntary because it deprives the defendant of the ability to make an intelligent and informed choice from among his alternative courses of action." *People v Corteway*, 212 Mich App 442, 445; 538 NW2d 60 (1995). Accordingly, mistaken or inaccurate advice involving sentencing consequences may render a plea involuntary or unknowing. See *Douglas*, 496 Mich at 593 ("We agree with the Court of Appeals that counsel's mistaken advice regarding the sentence the defendant faced at trial fell below an objective standard of reasonableness."); *People v Guyton*, 511 Mich 291, 302-303; 999 NW2d 393 (2023) (holding, in the due-process context, that a plea cannot "be understanding or knowingly entered into when it was, in significant part, induced on the basis of an inaccurate understanding of the minimum and maximum possible prison sentence").

Tomes maintains that his plea was involuntary because it was based on the inaccurate advice that each of his four felony-firearm charges "carries an automatic 2 years in prison consecutive to everything else," which would potentially result in "a mandatory 8 years" in addition to sentencing on his other charges. "In Michigan, concurrent sentencing is the norm, and a consecutive sentence may be imposed only if specifically authorized by statute." *People v Johnson*, 350 Mich App 560, 568; 34 NW3d 1 (2024) (quotation marks and citation omitted). With respect to consecutive sentencing, the felony-firearm statute provides:

> A term of imprisonment prescribed by this section is in addition to the sentence imposed for the conviction of the felony or the attempt to commit the felony and shall be served consecutively with and preceding any term of imprisonment imposed for the conviction of the felony or attempt to commit the felony. [MCL 750.227b(3).]

In *Sawyer*, 410 Mich at 535, the Michigan Supreme Court clarified that "[t]he statute neither compels nor authorizes a trial judge to impose consecutive multiple sentences for felony-firearm." This principle was reaffirmed in *Clark*, 463 Mich at 464, which stated, "No language in the statute permits consecutive sentencing with convictions other than the predicate offense."

In light of the clear statutory language and legal precedent establishing that felony-firearm sentences are consecutive only to their underlying offense, trial counsel's advice fell below an objective standard of reasonableness. Rather than evaluate his plea offer with the understanding that he faced a mandatory minimum of two years' imprisonment on his felony-firearm charges consecutive to his other sentences, Tomes was advised that rejecting the plea offer could result in a mandatory minimum sentence of eight years' imprisonment. Trial counsel emphasized this erroneous advice to Tomes while urging him to consider the plea offer, writing: "It's the risk of

the 8 years that I don't want you to gamble on. . . . You have more to lose than someone that doesn't have automatic mandatory minimums." By failing to adequately explain the consequences of Tomes's guilty plea and urging him to make his decision based on inaccurate information, trial counsel's advice rendered his guilty plea involuntary by "depriv[ing] [him] of the ability to make an intelligent and informed choice from among his alternative courses of action." *Corteway*, 212 Mich App at 445.

Further, there is a reasonable probability that "the outcome of the plea process would have been different with competent advice." *Douglas*, 496 Mich at 592 (quotation marks and citation omitted). While Tomes ultimately pleaded guilty, the record demonstrates that he repeatedly expressed a desire to go to trial. In trial counsel's letter, she noted that she "was a little surprised by [his] comment yesterday to go to trial." And when she moved to withdraw from representation, she noted Tomes's dissatisfaction with the fact that she was "asking Mr. Tomes to consider/accept the State's offer" in advance of the upcoming jury trial. After the court denied the motion to withdraw and substitute counsel, the prosecution stated that its plea offer was still pending but would expire at the end of the business day, after which Tomes accepted the offer.

After entry of the guilty plea, Tomes pursued avenues to withdraw it. He appeared with substitute counsel, who requested a sentencing adjournment to potentially prepare a motion to withdraw the plea, which ultimately was not filed. Tomes also sought withdrawal of the plea through appellate counsel, with one of his attorneys filing a "placeholder" motion to withdraw in order to preserve Tomes's appellate rights until he was appointed new counsel, who eventually filed the motion that is the subject of this appeal.

The record demonstrates that Tomes consistently resisted entry of a guilty plea and sought the appointment of a new attorney on that basis. Tomes was advised that he would face a mandatory minimum sentence of eight years on his felony-firearm charges—four times the two-year mandatory minimum sentence he actually faced. Even with trial counsel's emphasis on the risk of "gambl[ing] on" a possible eight-year mandatory minimum sentence, Tomes was still resistant to the plea offer. Having had his request for substitute counsel denied and under the impending deadline to accept the plea offer, Tomes eventually pleaded guilty. Thereafter, he consulted with at least three other attorneys to seek withdrawal of the plea, both before and after sentencing. Given Tomes's resistance to pleading guilty under the incorrect advice of counsel, the circumstances and timing under which he accepted the plea offer, and his subsequent attempts to withdraw the plea, there is a reasonable probability that he would have insisted on going to trial if he had been supplied with accurate advice about the consequences of his possible felony-firearm sentences. See *Hill*, 474 US at 59. Under these circumstances, it is reasonable to conclude that the erroneous advice was the cause of Tomes's plea.

Because Tomes established that he was denied the effective assistance of counsel when considering his plea agreement, the trial court abused its discretion by denying his motion to withdraw. Notably, the prosecution conceded that trial counsel's advice clearly misunderstood the law, because "[e]ven if you have fifteen felony firearms it would be two years." Despite the clearly established and conceded error, the trial court nonetheless determined that the advice was not objectively false. The trial court first denied Tomes's motion to withdraw, noting that "there is no case law that the court could find that says [Tomes's convictions] would not result in four separate consecutive sentences." Then, when presented with the caselaw to support Tomes's claim, the

trial court stated that "*Clark* does not really provide the answer to the question in this case," and that *Sawyer* was subsequently overruled.

Notably, *Clark* did address the issue presented. While that case focused on whether the defendant's two felony-firearm sentences could be consecutive to convictions other than their predicate offenses, *Clark*, 463 Mich at 464, it noted that pursuant to *Sawyer*, "The two felony-firearm sentences were themselves concurrent," *id*. at 462 n 6. Furthermore, as Tomes points out, *Sawyer*, 410 Mich 531, was not overruled by *Wilson*, 500 Mich 521, as the trial court suggested. To the contrary, *Wilson* explicitly stated that "the continuing viability of *Sawyer* is not before us in this case." *Id*. at 530 n 4. The trial court's interpretation of the felony-firearm statute and relevant caselaw was legally erroneous and necessarily an abuse of discretion.

Further, we are not persuaded by the trial court's reasoning that the deficient performance "was corrected when the prosecutor informed the defendant of the offer" before entry of the plea. After the court denied trial counsel's motion to withdraw from representation, the prosecution summarized the plea offer on the record, stating that the felony-firearm charges would carry "an additional, consecutive penalty of . . . two years in prison consecutive to any penalty imposed for any other conviction" and that the sentence would "run[] consecutive too [sic] and before any second penalty would start."

While this recitation of the plea offer accurately summarized the consecutive nature of sentencing for a felony-firearm conviction and its predicate offense, it does not necessarily correct the inaccurate advice provided by trial counsel. From these statements, Tomes could conceivably remain under the impression that his felony-firearm sentences were consecutive. The record clearly shows that Tomes received legally erroneous advice regarding the consequences of his felony-firearm sentences, but there is no indication that the misapprehension was affirmatively corrected by trial counsel, the prosecution, or the trial court. See, e.g., *Guyton*, 511 Mich at 304 (noting, in the due-process context, that the trial court erred by not allowing the defendant to withdraw her plea when it was involuntarily based on sentencing misinformation and "there was no correction on the record of the misinformation by the prosecutor, judge, or defense attorney"). Under these circumstances, we cannot conclude that the deficient advice was cured by the prosecution's statements.

In sum, Tomes resisted trial counsel's suggestion to accept the prosecution's plea offer and requested new counsel on this basis. The advice he received when considering the plea offer was premised on a clear misunderstanding of the law, and this error was recognized by both parties. The record bears no suggestion that the erroneous advice—that Tomes potentially faced a mandatory 8-year minimum sentence for consecutive felony-firearm charges—was corrected before he accepted the plea offer. In light of the conceded legal error and reasonable probability that Tomes would have pursued trial if properly advised, the trial court abused its discretion by

rejecting his ineffective-assistance argument. Tomes is therefore entitled to withdraw his involuntary guilty plea.[4]

We vacate the trial court's order denying Tomes's motion to withdraw his guilty plea and remand for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Stephen L. Borrello
/s/ Mariam S. Bazzi
/s/ Andrew J. Lievense

[4] Tomes also argues that his involuntary plea violated his due-process rights, and that he received ineffective assistance based on trial counsel's failure to challenge the multiple felony-firearm charges that arose from the same transaction. Given our resolution of the issue, we need not address Tomes's remaining arguments on appeal.