

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

RICHARD JOHN COFELL,

Defendant-Appellant.

UNPUBLISHED

November 17, 1998

No. 202903

Recorder's Court

LC No. 92-013808

Before: Young, Jr., P.J., and Wahls and Jansen, JJ.

MEMORANDUM.

Defendant appeals by right after remand from this Court his guilty plea based conviction for unlawfully driving away of an automobile, MCL 750.413; MSA 28.645, as a fourth habitual offender, MCL 750.12; MSA 28.1084. We affirm.

In defendant's initial appeal, *People v Cofell*, (Docket No. 164221, issued 08/19/94), an unpublished opinion, the panel noted that defendant was charged with UDAA, and receiving and concealing stolen property, MCL 750.535; MSA 28.803. Defendant argued that the two charges were alternative, and the plea bargain was illusory where both charges could not have been sustained. This Court remanded the matter for a new plea taking procedure in accordance with *People v Majors*, 104 Mich App 684; 305 NW2d (1981), to determine whether the prosecution could establish a factual basis for both UDAA and receiving and concealing stolen property, if it determined that defendant's plea was given in exchange for dropping the receiving and concealing charge.

On remand, the trial court relied on the preliminary examination transcript, and determined that a factual basis could be found for both UDAA and receiving and concealing stolen property, and thus the plea agreement dropping one of the charges was not illusory.

Defendant asserts that the trial court failed to comply with the mandate of this Court by not conducting a new plea taking. We disagree. It is generally unnecessary to establish the factual basis for dismissed charges. *People v Rashid*, 154 Mich App 762, 767; 398 NW2d 525 (1986). The remand order did not vacate defendant's plea, and require that the plea be retaken. The remand had the limited purpose of determining whether the plea agreement was illusory. The

trial court used the preliminary examination transcript to determine that it was not. *People v Hastings*, 422 Mich 267; 373 NW2d 533 (1985). The trial court complied with the mandate of this Court. *Rodriguez v General Motors Corp (On Remand)*, 204 Mich App 509, 514; 516 NW2d 105 (1994).

Affirmed.

/s/ Robert P. Young, Jr.

/s/ Myron H. Wahls

/s/ Kathleen Jansen