

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

MICHAEL R. ROSTICK,

Defendant-Appellant.

UNPUBLISHED

January 15, 2004

No. 241916

Kent Circuit Court

LC No. 00-008352-FH

Before: Markey, P.J., and Murphy and Talbot, JJ.

PER CURIAM.

Defendant pleaded nolo contendere to unarmed robbery, MCL 750.530. He was sentenced to a term of 4 ½ to fifteen years' imprisonment. Defendant was denied leave to appeal by this Court, and filed for leave to our Supreme Court. In lieu of granting an appeal, our Supreme Court remanded the case to this Court, and limited this Court's review to the question of whether MCR 6.302(D)(2) was fulfilled in accepting defendant's plea. We vacate defendant's guilty plea and conviction and remand.

Defendant was charged with unarmed robbery, MCL 750.530, which carries a maximum sentence of fifteen years. He was also charged as a fourth habitual offender, MCL 769.12, increasing the maximum sentence term to life. In exchange for dropping the habitual offender charge, defendant pleaded nolo contendere to the unarmed robbery charge, asserting intoxication as the grounds for the no contest plea.

The issue before this Court is whether there was a sufficient factual basis for the trial court to accept defendant's plea and convict him of unarmed robbery. MCR 6.302(D)(2)(b) requires a trial court to hold a hearing, and find a factual basis for a plea before accepting it:

(2) If the defendant pleads nolo contendere, the court may not question the defendant about participation in the crime. The court must:

(a) state why a plea of nolo contendere is appropriate; and

(b) hold a hearing, unless there has been one, that establishes support for a finding that the defendant is guilty of the offense charged or the offense to which defendant is pleading to be accepted.

At the plea hearing, the prosecutor provided the police report to the trial court, which was the only evidence offered by the prosecution. The trial court reviewed the police report and summarized it as follows:

It appears from the police report that Mr. Rostick, who is reported to have been intoxicated at the time, approached the victim ... on the street on July 5 and hit him several times with what appeared to be a small camera or radio and said, "Give me your bag" and also said, "Give me your money," and when he refused Mr. Rostick then took some small, hard object and hit him in the head a few times. Then, he fled on foot.

From these facts the trial court concluded:

We don't actually have one of the elements of an unarmed robbery, because we don't have any evidence that he [defendant] actually received something which he moved, but we do have the elements of assault with intent to rob armed [sic], which is a more serious crime, and under the circumstances I will accept the plea in this case, and there is a factual basis for it.

Defendant moved to withdraw the plea under MCR 6.302(D)(2), for lack of a factual basis that defendant committed a robbery. The trial court denied defendant's motion, reasoning as follows:

Well I'm [sic] been taking pleas for 12 years now and I can't count the number of times I've taken a plea based upon a factual scenario to a crime more serious than the one to which the person was pleading Under the circumstances I thought that pretty much defined an assault with intent to rob armed, and that's a life offense and what he was pleading to was an unarmed robbery which is, I think, a 15-year, there was a sufficient basis for me to accept the plea and I did.

Thus, the trial court itself acknowledged that it accepted a plea without establishing "support for a finding that the defendant is guilty of the offense charged or the offense to which defendant is pleading." In doing so, it acted contrary to MCR 6.302(D)(2)(b). Accordingly, defendant's guilty plea and conviction are vacated.

Defendant's guilty plea and conviction are vacated and the case is remanded for proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Jane E. Markey
/s/ William B. Murphy
/s/ Michael J. Talbot