

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

LEROY ROLAND,

Defendant-Appellant.

UNPUBLISHED

December 6, 1996

No. 182767

LC No. 94-004019-FD

Before: J.H. Gillis, P.J., and G.S. Allen and J.B. Sullivan, JJ.*

MEMORANDUM.

Defendant pleaded guilty to operating a motor vehicle while under the influence of intoxicating liquor, third offense, MCL 257.625; MSA 9.2325, and was sentenced to forty to sixty months' imprisonment. He appeals as of right. We remand. This case has been decided without oral argument pursuant to MCR 7.214(A).

Having reviewed the record, we are not convinced that defendant expressly and unequivocally waived his right to the assistance of counsel at the plea-taking proceeding. *People v Gonzales*, 179 Mich App 477, 481-482; 446 NW2d 296 (1989); *People v Schneider*, 132 Mich App 214, 216-219; 347 NW2d 21 (1984). Clearly, defendant was struggling with understanding the nature of the hearing and the rights that he was foregoing by pleading guilty. The trial court should have halted the proceedings and appointed an attorney to represent defendant. Moreover, the record indicates that the sentencing court failed to strictly comply with MCR 6.005(E) at sentencing. *People v McKinnie*, 197 Mich App 458, 460-461; 495 NW2d 796 (1992). That is, the sentencing record does not demonstrate that defendant expressly and unequivocally waived his right to counsel at sentencing. *Gonzales, supra*. In light of the above errors, we remand to first give defendant an opportunity to withdraw his plea. If he chooses to do so, the prosecution may proceed with the original charges that were filed or could have been filed against him. MCR 6.312. If he declines to do so, the court shall resentence him while strictly complying with the requirements of MCR 6.005(E).

*Former Court of Appeals judges, sitting on the Court of Appeals by assignment pursuant to Administrative Order 1996-10.

Remanded for further proceedings in accordance with this opinion. We do not retain jurisdiction.

/s/ John H. Gillis

/s/ Glenn S. Allen, Jr.

/s/ Joseph B. Sullivan