

STATE OF MICHIGAN
COURT OF APPEALS

ORION TOWNSHIP,

Plaintiff-Appellant,

v

CONSTANCE KRAJICEK,

Defendant-Appellee.

UNPUBLISHED

March 11, 1997

No. 188996

Oakland Circuit Court

LC No. 94-DA6192-AV

Before: Cavanagh, P.J., and Reilly, and C.D. Corwin,* JJ.

PER CURIAM.

Defendant was convicted by a jury of violating § 30.07 of the Orion Township Zoning Ordinance No. 78 for failing to obtain a certificate of occupancy before moving into her home. The district court gave defendant a choice of serving five days in jail or fifty hours of community service. She chose to serve five days in jail. Defendant filed an appeal in the circuit court. The circuit court concluded that defendant's due process rights were violated and reversed defendant's conviction and sentence. Plaintiff appeals as of right. We affirm the circuit court's reversal of the conviction and sentence, but remand for an arraignment and a new trial.

The circuit court reversed defendant's conviction and sentence on the grounds that her right to due process was violated in three ways: (1) because defendant was charged with violating § 30.07 of the township ordinance and that section does not indicate a criminal penalty or refer to the penalty section of the ordinance, defendant was not given adequate notice of the fact that she was charged with a criminal offense; (2) no arraignment was held and the circumstances do not indicate a knowing and understanding waiver of defendant's right to an arraignment; and (3) the district court did not give defendant an opportunity to review the presentence report before sentencing as required by MCR 6.610(F)(2).

We agree with the circuit court that the conviction and sentence must be vacated because defendant was not arraigned as required by MCR 6.610(D)(1). Citing *People v Weeks*, 165 Mich 362; 130 NW 697 (1911), plaintiff contends that defendant waived review of any error in the lack of

* Circuit judge, sitting on the Court of Appeals by assignment.

arraignment by failing to raise an objection in the district court. We disagree. The defendant in a criminal case does not have the burden of coming forward to request an arraignment on charges even if she is aware that the arraignment has not occurred. *People v Thomason*, 173 Mich App 812, 816; 434 NW2d 456 (1988). In *Weeks*, the defendant was represented by counsel who failed to call attention to the omission of the arraignment and plea, the defendant had filed affidavits denying the charge under oath and asserting that he had a meritorious defense, and the defendant's counsel stated to the jury that the defendant had pleaded not guilty. *Weeks* is an exception to the general rule mandating reversal where there is no arraignment nor a knowing and voluntary waiver of the right to an arraignment. See *People v Grigg*, 31 Mich 470 (1875); *Thomason, supra*. Here, defendant was not represented by counsel and asserts that she did not even realize that she was charged with a criminal offense. We agree with the circuit court that *Weeks* is distinguishable on its facts. Thus, the conviction and sentence must be reversed. On remand, defendant must have an arraignment or waive the same on the record. *Thomason, supra*.

We do not agree with the circuit court that the other grounds cited by the court warranted reversal of the conviction and sentence. Failure to give defendant an opportunity to review the presentence report before sentencing as required by MCR 6.610(F)(2) would at most entitle defendant to resentencing, not reversal of the conviction. The fact that § 30.07 of the township ordinance does not indicate a criminal penalty or refer to the penalty section of the ordinance is of no consequence. Certain sections of the Michigan Penal Code do not provide a penalty or a reference to another section that provides the penalty. See, e.g. MCL 750.197(2); MSA 28.394(2). For a violation of such a section, MCL 750.503 *et seq.*; MSA 28.771 *et seq.* specifies the penalty. See, e.g. *People v Bell*, 439 Mich 869; 475 NW2d 826 (1991). We fail to see why the absence of an express reference to the penalty warrants a reversal of any conviction obtained for violation of the section. As for defendant's assertion that because § 30.07 of the township ordinance did not specify the penalty, she was unaware that she was charged with a crime, we note that she would have been apprised of that fact had she been arraigned.

Because defendant was not arraigned and did not waive the same, her conviction and sentence are reversed and the case is remanded for further proceedings.

Reversed and remanded. We do not retain jurisdiction.

/s/ Mark J. Cavanagh
/s/ Maureen P. Reilly
/s/ Charles D. Corwin