

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

WILLIAM GARNER,

Defendant-Appellant.

UNPUBLISHED

February 19, 1999

No. 202979

Recorder's Court

LC No. 96-501135

Before: Gribbs, P.J., and Saad and P. H. Chamberlain,* JJ.

MEMORANDUM.

Defendant appeals by leave granted his plea-based convictions of malicious destruction of police property, MCL 750.377b; MSA 28.609(2), fleeing and eluding, MCL 257.602a; MSA 9.2302(1), and driving while license suspended, second offense, MCL 257.904(1)(b); MSA 9.2604(1)(b). We reverse.

Defendant pleaded nolo contendere to malicious destruction of police property, fleeing and eluding, and driving while license suspended, second offense. In return for the plea, the prosecution agreed to dismiss a second count of malicious destruction of police property. The police report provided the factual basis for the plea. The trial court did not formally accept the plea, and did not take it under advisement.

At sentencing, defendant moved to withdraw his plea. He stated that he was not guilty of the charges and that he entered a plea only because his counsel advised him to do so. The trial court denied the motion, stating that it did not believe that counsel would make such a recommendation. Defendant was sentenced to thirty days in jail on the fleeing and eluding charge, with credit for sixty-two days, and to three years' probation on the remaining charges.

MCR 6.310 provides in part:

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

(A) Withdrawal Before Acceptance. The defendant has a right to withdraw any plea until the court accepts it on the record.

(B) Withdrawal Before Sentence. On the defendant's motion or with the defendant's consent, the court in the interest of justice may permit an accepted plea to be withdrawn before sentence is imposed unless withdrawal of the plea would substantially prejudice the prosecutor because of reliance on the plea. If the defendant's motion is based on an error in the plea proceeding, the court must permit the defendant to withdraw the plea if it would be required by MCR 6.311(B).

We reverse. A defendant has no absolute right to withdraw a guilty plea once it has been accepted. *People v Gomer*, 206 Mich App 55, 56; 520 NW2d 360 (1994). However, in this case, the court never accepted defendant's plea of nolo contendere on the record. While imposition of sentence constitutes implicit acceptance of the plea, *Guilty Plea Cases*, 395 Mich 96, 126; 235 NW2d 132 (1975), defendant moved to withdraw his plea prior to sentencing. Under the circumstances of this case, defendant was entitled to withdraw his plea. MCR 6.310(A).

Reversed and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Roman S. Gibbs
/s/ Henry William Saad
/s/ Paul H. Chamberlain