

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JEFFERY DANIEL REEDER,

Defendant-Appellant.

UNPUBLISHED

November 12, 1999

No. 207497

Monroe Circuit Court

LC No. 97-028261 FH

Before: Whitbeck, P.J., and Gribbs and White, JJ.

MEMORANDUM.

Following a jury trial, defendant was convicted of breaking and entering a motor vehicle with intent to steal property worth \$5.00 or more, MCL 750.356a; MSA 28.588(1). He was subsequently convicted of being a third habitual offender, MCL 769.11; MSA 28.1083, and was sentenced to two to ten years' imprisonment. Defendant moved for a new trial on grounds of ineffective assistance of counsel, but the trial court denied his motion for a new trial as well as his request for an evidentiary hearing under *People v Ginther*, 390 Mich 436; 212 NW2d 922 (1973). On appeal, defendant challenges only the court's denial of his post-trial motion. We reverse the trial court's denial of defendant's motion for a *Ginther* hearing and remand for further proceedings. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant argues that the trial court abused its discretion by denying his request for a *Ginther* hearing to develop a record in order to test the validity of his ineffective assistance of counsel claims. We agree. Ordinarily, when a claim of ineffective assistance of counsel is based upon counsel's failure to interview and call witnesses, it is essential to receive testimony from the allegedly ineffective counsel at a *Ginther* hearing in order to assess the claim. *People v Bass (On Rehearing)*, 223 Mich App 241, 255; 565 NW2d 897 (1997), vacated in part on other grounds 457 Mich 866 (1998). The trial court abused its discretion by deciding defendant's motion for new trial without first conducting a *Ginther* hearing.

We reverse the trial court's denial of defendant's motion for a *Ginther* hearing and remand to the trial court, which shall reconsider defendant's motion for new trial after conducting an

evidentiary hearing on defendant's claims of ineffective assistance of counsel. We do not retain jurisdiction. Defendant shall have 21 days after the trial court's entry of an order disposing of the motion for new trial in which to file a claim of appeal from that ruling.

/s/ William C. Whitbeck

/s/ Roman S. Gibbs

/s/ Helene N. White