

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff-Appellee,

v

CARL ANTHONY JARSON,

Defendant-Appellant.

No. 57591
Motion to With-
draw (Guilty Plea

TO: Judges
FROM: Marilyn Morris Wanger
DATE: December 16, 1981; for submission January 5, 1982.

COMMISSIONER'S REPORT

FACTS:

Farmington Hills attorney William G. Wolfram seeks leave of this Court to withdraw as appointed appellate counsel for defendant for the reason that thorough review of the lower court record and the transcript of proceedings does not reveal the existence of any nonfrivolous issues which might be argued for this defendant on appeal. Counsel states that on May 8, 1981 he communicated with the defendant by writing, inviting the defendant to relate any circumstances about the case that might be regarded as error, even if it was not apparent on the record. Counsel's client responded, indicating a complaint that his two prior attorneys mishandled the case and that the charge was "trumped up". That issue was discussed in counsel's brief in support of a motion to withdraw.

Defendant was charged with armed robbery and felonious assault. Pursuant to a plea bargain he pled guilty to armed robbery with an agreed sentence of no more than three to five years in prison and a dismissal of the charge of felonious assault. That plea was entered March 20, 1981, before Oakland County Circuit Judge Alice L. Gilbert and the sentencing occurred on April 16, 1981.

This motion was filed in substantial compliance with the procedures adopted by this Court in Anders motions. The motion and brief in support thereof were served on defendant and

the prosecuting attorney on September 11, 1981. The material in the duplicate file furnished by the Clerk's office to the writer does not show if this Court's Ander's letter was sent to the defendant. No response was received by this Court from the defendant.

In his brief defense counsel has addressed the issue of whether the record reveals the existence of any nonfrivolous issue which might be argued for this defendant on appeal and has concluded that it does not. Specifically, defense counsel has considered whether the transcript of the proceedings reveals complete compliance with GCR 1963, 785.7 and has concluded that it does. Further, he has considered whether there is any basis for a defense of entrapment suggested by the preliminary examination transcript and has concluded that there is not. Additionally, defense counsel addressed the matter of whether the statute under which defendant was charged was constitutional and whether the information charged the named offense in an acceptable fashion and concluded that there was no meritorious issue with regard to either of those possible arguments.

Defense counsel also considered whether or not there was a double jeopardy issue in this case and while trial counsel did raise such an issue based on the contention that the armed robbery and felonious assault charges arose out of the same facts, since the felonious assault charge was dismissed as part of the plea bargain, defense counsel has concluded that the issue is moot, notwithstanding its arguable validity had defendant gone to trial on both charges. Counsel also states that his review of the record reveals that sufficient evidence was adduced at the preliminary examination and that there was no tangible evidence which might have been the subject of a suppression motion which was absolutely essential for the prosecution. Counsel concluded that all jurisdictional requirements were met. Finally, counsel addressed the sentencing proceedings and concluded that no error

occurred at them and that the sentence was neither cruel nor unusual and was within the statutory limits.

ISSUE:

SHOULD THIS COURT GRANT THE MOTION TO WITHDRAW AND AFFIRM DEFENDANT'S CONVICTION BECAUSE AFTER A FULL EXAMINATION OF ALL THE PROCEEDINGS IT IS THE FINDING OF THE COURT THAT THE APPEAL IS WHOLLY FRIVOLOUS?

DISCUSSION:

In accordance with the policy adopted by this Court based on Anders v California, 18 L Ed 2d 493 (1967), the writer has searched the record for any latent issues that might possibly be arguable on their merits and has found none. Defendant knew that he was pleading guilty to armed robbery, that it had a maximum possible prison sentence of life, that it had a minimum prison sentence of one year and one day and that if his plea was accepted, he would not have a trial of any kind either before the court or a jury. (Tr, pp 7-9) Defendant was not on probation or parole and he was advised that the prosecution could not charge him as a habitual offender. (Tr, pp 8, 15-17) Also, the court advised defendant that at a trial he would be presumed innocent until proven guilty, the prosecutor would have to prove guilt beyond a reasonable doubt, that he would have the right to have witnesses against him appear at trial and to question them and to have the court order any witnesses he had for his defense to appear at the trial, to remain silent during the trial, to not have his silence used against him, and to testify at the trial if he wanted to do so. (Tr, pp 9 & 10).

The plea bargain was set forth on the record. (Tr, pp 3-7, 11) It was that the maximum sentence would be three to five years and the felonious assault charge would be dismissed and there would be no possibility of his having been charged as a habitual offender since under the current law the prosecution could not do that. (See also Tr, p 15-17) The court determined that no one had promised defendant anything beyond the

agreement, that no one had threatened him, and that he was pleading guilty of his own choice. (Tr, pp 11-12) A factual basis for the guilty plea was elicited at pp 12-15 when defendant stated that at a location in Avon Township, he and his codefendant Earl Vincent took a radio at knife point from the complainant, Mr. Armour. He stated that the radio was not his or his codefendant's and he intended to keep the radio and that the knife he used was a folding knife with a 2-1/2 to 3 inch blade which he had in his pocket in a carrying case. Defendant said he took the knife out of the carrying case and displayed it in connection with this event.

Defense counsel stated that he was satisfied the court had complied with the court rule. (Tr, p 17) The court found that the plea was freely and voluntarily offered and that it was understandingly and accurately made with full knowledge and understanding of defendant's constitutional rights. (Tr, p 17)

At the sentencing, defense counsel and defendant both exercised their right of allocution. (Tr, pp 3 & 4) The court sentenced defendant to a term of three to five years in prison, pursuant to the plea bargain, and gave him credit for 201 days. (Tr, p 6) Defense counsel had an opportunity to examine the presentence report and found no errors in it. (Tr, p 3)

RECOMMENDATION:

It is recommended that the motion to withdraw be granted and defendant's conviction affirmed.