

#13.

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

No. 58450  
Motion to Withdraw

-v-

RONALD BURTON,

Defendant-Appellant.

TO: Judges  
FROM: Allan Falk  
DATE: December 21, 1981; for submission January 5, 1982.

COMMISSIONER'S REPORT

FACTS:

John A. Steinberger seeks permission to withdraw as court-appointed appellate counsel for Ronald Burton pursuant to this Court's Anders procedure.

Defendant was convicted on plea of guilty in the Recorder's Court for the City of Detroit, Hon. Donald L. Hobson presiding, on April 16, 1981, of breaking and entering an occupied dwelling with intent to commit larceny and robbery armed. The plea was the result of a sentence bargain, pursuant to which defendant agreed to plead guilty "on the nose" for the two-count information lodged against him, in exchange for which Judge Hobson agreed that defendant would receive a sentence not greater than 6-15 years on each count. The plea was stated on the record and affirmatively acknowledged by defendant, defense counsel, and the prosecutor.

Prior to accepting defendant's plea, the court advised him that the maximum sentence he could receive for breaking and entering is 15 years, while the maximum for armed robbery is life imprisonment, and as to armed robbery he could not be placed on probation. Repeatedly, defendant was informed that he would definitely be sentenced to prison.

The trial court also enumerated defendant's right to trial by jury or by the court without a jury, and the rights incident thereto, not once, but twice, each time inquiring whether

defendant understood the rights, whether he understood the concept of waiver, and whether he waived that right. On the first run through, the court informed defendant of each right and ascertained that defendant waived it. During the repetition, the court took a different tact, inquiring for example, "Do you wish me to force the prosecutor to bring your accusers to open court and prove your guilt beyond a reasonable doubt?" Again, defendant indicated that he did not wish a trial or any of the rights incident thereto.

Although defendant stated he was not on probation or parole and had never previously been convicted of a felony, he was nonetheless informed that by pleading guilty he would admit a violation of any probation or parole status and that if he had previously been convicted of a felony, in the absence of a sentence bargain his maximum punishment could be increased under the habitual offender laws.

In response to questions from the court, defendant stated that on the date and at the time and place alleged in the information, which place was in the City of Detroit, he broke and entered an occupied dwelling with a screwdriver, kicked in the kitchen door, assaulted the occupant with a knife and forced her to sit while from her person he stole jewelry and other valuables. In preparation for the burglary, defendant had cut the telephone wires, but apparently too late, because in making his exit he was confronted by police officers, who shot him in the leg.

Defendant stated that his plea was freely, understandingly, and voluntarily made, that he had no difficulty understanding or hearing the court, and that he had no previous difficulty understanding or hearing his attorney, with whose representation he was satisfied. After being apprised by defense counsel and the prosecutor that he had complied with the court rules, Judge Hobson thereupon accepted defendant's plea and scheduled defendant for sentencing.

At sentencing on April 27, 1981 defendant appeared with substitute counsel, to whose representation he consented, the court being informed that original counsel was ill. Defense counsel acknowledged having had the opportunity to review the presentence report, to which he had no additions or corrections. Defendant and defense counsel were each given an opportunity to state to the court anything they wished the court to consider in imposing sentence. The court sentenced defendant to 6-15 years imprisonment on each count, giving defendant credit for 89 days incarceration while awaiting resolution. Defendant was advised of his appellate rights, which he has exercised.

ISSUE:

SHOULD THE MOTION TO WITHDRAW BE GRANTED?

FINDINGS:

The motion to withdraw should be granted.

This was as close to a perfect plea as is possible; Judge Hobson has apparently learned from lugubrious personal experience that five extra minutes spent in taking a plea saves hours of hearing time later. Thus, Judge Hobson made repeated inquiries of defendant to determine whether defense counsel had advised defendant of the possibility of probation; she had not. The trial court complied with every jot and tittle of GCR 1963, 785.3, .4, .7, .8, .11, and .12 in taking defendant's plea and in imposing sentence. This appeal is wholly frivolous.

RECOMMENDATION:

The motion to withdraw should be granted. A proposed order has been prepared for the Court's consideration.