

#16

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff-Appellee,

-v-

RONALD RICHARD MILLER,

Defendant-Appellant.

No. 58476
Motion to Withdraw
(Guilty Plea)

TO: Judges
FROM: David Jordon
DATE: May 7, 1982; for submission May 18, 1982

COMMISSIONER'S REPORT

FACTS:

Lapeer attorney Frank A. Antonelli seeks leave of this Court to withdraw as appointed appellate counsel from defendant's plea-based conviction of unlawful driving away of an automobile without intent to steal (joy-riding) in violation of MCL 750.414; MSA 28.646 for the reason that:

"I. Defendant-Appellant claims that the sentence of the Court was excessive;

"II. That said appellate counsel has made a conscientious examination of the records and cannot find anything in the record that might arguably support the appeal;

"III. Defendant-Appellant claims that his alcohol consumption before and during the evening in question diminished his responsibility and therefore his culpability;

and that these matters and this appeal present no non-frivolous issues." (Motion filed October 27, 1981).

The motion to withdraw is sought in substantial compliance with the practice of this Court adopted from Anders v California, 386 US 738; 87 S Ct 1396; 18 L Ed 2d 493 (1967).

On January 26, 1981, defendant pled guilty before Lapeer County Circuit Judge Norman A. Baguley. On March 9, 1981, defendant was sentenced to one year in jail. Defendant made a timely request for appointment of appellate counsel, since the date of the request being made, not the date ultimately filed is appropriate. People v McKinley, 383 Mich 529 (1970).

at the time of the crime, the plea, and the sentencing. In any event, the court did not recognize any discretion to transfer jurisdiction over defendant to juvenile court pursuant to MCL 764.27; MSA 28.886. However, Judge Baguley did note, when requested at sentencing by defense counsel to consider the lesser sentence of three months or \$100 fine available under the joyriding statute that it was not appropriate in this case. This writer does not believe a non-frivolous issue is present.

Preliminary examination was waived, and a return filed dated January 23, 1981. Defendant appeared before Judge Baguley to plead guilty on January 26, 1981. My review of the transcripts of the proceedings herein reveals the following:

(1) An understanding plea.

- (a) The court advised the defendant of the name of the offense to which he was pleading (Tr, p 3).
- (b) The court advised defendant of the maximum possible two-year prison sentence for the offense (Tr, p 4).
- (c) The court determined from the defendant that he had not been previously convicted of a felony. The court advised the defendant that in any event if he had been previously convicted of a felony the maximum possible punishment could be increased (Tr, p 4).
- (d) There was no need for the court to advise as to any mandatory minimum prison sentence.
- (e) The court advised the defendant that if he were on probation or parole, he could be sentenced for violating probation or parole (Tr, pp 4-5).
- (f) The plea was not to murder, armed robbery, or treason, so no special warning was necessitated.
- (g) The court advised the defendant of giving up the specified ten trial rights (Tr, pp 5-7).

(2) A voluntary plea.

- (a) The court asked the prosecutor and the defendant's lawyer whether they had made a plea agreement (Tr, p 2).

Sentencing.

While represented by the same counsel as at the plea-taking, defendant was sentenced by Judge Baguley on March 9, 1981. Defense counsel indicated that he had reviewed the presentence report, and that the information was accurate. Both defendant and his counsel was given the opportunity to address the court prior to sentence being imposed. As indicated above in this report, defense counsel requested the lesser offense under the joyriding statute, but the court denied the same. Defendant was sentenced to one year in the county jail, and indeterminate sentencing as interpreted by People v Tanner, 387 Mich.683 (1972) is not applicable when a sentence of one year or less is imposed under MCL 769.28; MSA 28.1097(1). People v Lyles, 76 Mich.App.688 (1977). Proper credit was given for the two days defendant spent in custody prior to sentencing. The appropriate notification of defendant's right to appellate review and appellate counsel was given at the close of sentencing proceeding. Sentencing was without error.

RECOMMENDATION:

No non-frivolous issue has been found in the proceedings below. Therefore, the motion to withdraw should be granted and defendant's conviction affirmed. Since defendant has not filed a response to the motion, the order should be stayed for a period of 30 days in order to provide defendant with the opportunity to file a response. A proposed order is attached for the Court's consideration.