

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

MICHAEL NIXON,

Defendant-Appellant.

UNPUBLISHED

December 6, 1996

No. 186809

LC No. 94-007934

Before: J.H. Gillis, P.J., and G.S. Allen and J.B. Sullivan, JJ.*

MEMORANDUM.

Defendant pleaded guilty of operating a motor vehicle while under the influence of liquor and causing death, MCL 257.625(4); MSA 9.2325(4). He was sentenced to four to fifteen years' imprisonment, and appeals as of right. We remand. This case has been decided without oral argument pursuant to MCR 7.214(A).

The record reveals that defendant might have had the possible defense of necessity and yet there is no indication that defense counsel was aware of the defense, took steps to assert the defense, or even discussed the defense with defendant. We therefore remand for an evidentiary hearing on whether defense counsel was ineffective for failing to raise the necessity defense, thereby rendering defendant's plea involuntary and not understanding. *People v Corteway*, 212 Mich App 442; 538 NW2d 60 (1995); *People v Marji*, 180 Mich App 525; 447 NW2d 835 (1989). If it is determined that counsel was ineffective, defendant shall be given the opportunity to withdraw his plea and the prosecutor shall be allowed to reinstate the original charges against defendant. MCR 6.312. If counsel was not ineffective, defendant's conviction and sentence shall stand.

*Former Court of Appeals judges, sitting on the Court of Appeals by assignment pursuant to Administrative Order 1996-10.

Remanded for an evidentiary hearing on defendant's ineffective assistance of counsel claim. We do not retain jurisdiction.

/s/ John H. Gillis

/s/ Glenn S. Allen, Jr.

/s/ Joseph B. Sullivan