

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

MARK B. BEATHARD,

Defendant-Appellant.

UNPUBLISHED

March 4, 1997

No. 176498

Oakland Circuit

LC No. 94-131644-FH

Before: D.F. Walsh,* P.J., and R.P. Griffin** and W.P. Cynar,* JJ.

MEMORANDUM.

Defendant pleaded guilty to unarmed robbery, MCL 750.530; MSA 28.798, operating a motor vehicle under the influence of liquor, third offense, MCL 257.625(6)(d); MSA 9.2325(6)(d), resisting and obstructing a police officer, MCL 750.479; MSA 28.747, and corresponding counts of habitual offender, second offense, MCL 760.10; MSA 28.1082. He was sentenced to enhanced terms of 3 to 22-1/2 years' imprisonment for the robbery conviction, 1 to 7-1/2 years' imprisonment for the OUIL-3rd conviction, and 1 to 3 years' imprisonment for the resisting and obstructing conviction. He appeals as of right. We affirm in part and remand in part. This case has been decided without oral argument pursuant to MCR 7.214(A).

Defendant first argues that the court failed to establish the requisite factual foundation for acceptance of a guilty plea.¹ A plea of guilty may be accepted even though a defendant asserts that he was intoxicated or narcotized at the time of the offense as long as he sufficiently recalls facts and circumstances which tend to show that he participated in the commission of the offense. *People v Burton*, 396 Mich 238, 242; 240 NW2d 239 (1976). A review of the plea transcript in this case reveals that defendant clearly did not recall the events surrounding the charge of resisting a police

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

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

officer. Accordingly, there was not a sufficient factual basis to support the plea to that charge. Remand is therefore necessary in order for the prosecutor to attempt to establish that defendant committed the offense. If the prosecution cannot establish this, the trial court shall set aside the conviction. *People v Brownfield (After Remand)*, 216 Mich App 429, 431; 548 NW2d 248 (1996).

Defendant also argues that his counsel was ineffective for failing to perfect a *Cobbs*² plea. A review of the plea transcript reveals that the trial court apparently misspoke. There is no indication of any intent to have a *Cobbs* plea. The plea agreement stated on the record did not contain any sentence agreement. Moreover, defendant stated that he understood the plea bargain, that there were no other promises made and that no one forced him to plead guilty. Therefore, we hold that defendant tendered his plea voluntarily and understandingly and that counsel was not ineffective. *People v Swirles (After Remand)*, 218 Mich App 133; 553 NW2d 357 (1996).

Affirmed in part and remanded in part for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Daniel F. Walsh
/s/ Robert P. Griffin
/s/ Walter P. Cynar

¹ Defendant does not specify which count he is referring to; however, defendant moved to withdraw his plea with respect to the resisting arrest charge only and such a motion is a prerequisite to review such an issue on appeal. *People v Beasley*, 198 Mich App 40, 43; 497 NW2d 200 (1993). Therefore, we will review the factual basis for this offense only.

² *People v Cobbs*, 443 Mich 276, 283; 505 NW2d 208 (1993).