

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DARRELL LOWMAN,

Defendant-Appellant.

UNPUBLISHED

December 19, 1997

No. 195248

Oakland Circuit Court

LC No. 95-142339 FH

Before: McDonald, P.J., and Wahls and J. R. Weber*, JJ.

MEMORANDUM.

Defendant was convicted by a jury of unarmed robbery, MCL 750.530; MSA 28.798 and adjudicated a fourth offender, MCL 769.12; MSA 28.1084. After sentencing, defendant through appointed appellate counsel filed sequential motions for new trial, claiming, first, that he was incompetent to stand trial and, second, that his trial counsel was ineffective in failing to present a defense of insanity or diminished capacity. The only documentation presented in support of either motion was a handwritten statement by defendant, unsworn and unnotarized, in which defendant asserts that he did not want to steal the child's bicycle but "could not help myself." On appeal, defendant argues only this his trial counsel was ineffective for failing to raise an insanity or diminished capacity defense.

The so-called "irresistible impulse" version of the insanity defense under Michigan jurisprudence, generally attributed to *People v Durfee*, 62 Mich 487, 493-494; 29 NW 109 (1886), requires that the defendant's lack of power to resist the impulse to do the act constituting the gravamen of the offense be attributable to disease or insanity. *People v Martin*, 386 Mich 407, 419 n 5; 192 NW2d 215 (1971). Aside from the fact that defendant's letter is not in the form of an affidavit, and putting aside procedural barriers to the filing of sequential motions, defendant's letter contains nothing to indicate that his failure to resist his impulse to steal the child's bicycle was the product of mental disease or infirmity. Hence, trial counsel can hardly be deemed ineffective in the constitutional sense absent a showing that facts or evidence sufficient to make out a prima facie insanity or diminished capacity defense were made known to counsel before trial, and the trial court therefore did not err in denying defendant's motions for new trial. *People v Pickens*, 446 Mich 298; 521 NW2d 797 (1994).

* Circuit judge, sitting on the Court of Appeals by assignment.

Affirmed.

/s/ Gary R. McDonald

/s/ Myron H. Wahls

/s/ John R. Weber