

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

MARVIN LAWRENCE TILLIE, a/k/a RODNEY
WILLIAMS,

Defendant-Appellant.

UNPUBLISHED

March 10, 1998

No. 188607

Recorder's Court

LC Nos. 94-3724 FH;

94-3725 FH

Before: O'Connell, P.J., and Gribbs and Smolenski, JJ.

PER CURIAM.

Defendant originally pleaded guilty to five counts of uttering and publishing, MCL 750.249; MSA 28.588(3), and was sentenced to four years' probation. He violated that first term of probation and was resentenced to a term of three years' probation. As part of his new probation order, defendant was required to participate in a drug abuse treatment program. Defendant subsequently pleaded guilty to violating the terms of his probation; the trial court then revoked defendant's sentence of probation and resentenced him to five concurrent prison terms of five to fourteen years for each count of uttering and publishing. Defendant filed his claim of appeal on August 21, 1995. We vacate and remand.

Defendant first contends that the trial court erred in finding that there was an adequate factual basis for defendant's plea to violation of probation. At a November 13, 1995 hearing, the trial court denied defendant's motion to withdraw his guilty plea. The court found that the factual basis for the plea was "satisfactory." We review the trial court's decision to deny defendant's motion to withdraw his plea under an abuse of discretion standard. *People v Bencheck*, 360 Mich 430, 432; 104 NW2d 191 (1960). In determining whether the factual basis was sufficient, we conduct an independent review of the record. *People v Draper*, 49 Mich App 353, 354-355; 212 NW2d 81 (1973).

At the plea proceedings, the following exchange occurred:

THE COURT: Is it true that you absconded from the – whatever the V.A.? How do you plead to violation of probation, guilty or not guilty?

DEFENDANT: Guilty, sir.

THE COURT: Accept the plea of guilty. On all files?

DEFENDANT: Yes, sir.

On appeal, defendant contends that the record never indicated that he absconded or otherwise recited facts which would indicate guilt. We agree, and find that the trial court erred in failing to elicit a factual basis to support defendant's plea in accordance with MCR 6.445(F)(4). Pursuant to this rule, the court must, *before accepting a guilty plea* "establish *factual support* for a finding that the probationer is guilty of the alleged violation." (Emphasis added). Here, in response to the court's inquiry as to whether defendant wished to plead "guilty or not guilty," defendant merely indicated that he was pleading guilty; he did not, however, answer the court's question as to whether it was true that he "absconded." Merely indicating a desire to plead guilty is not sufficient; the factual basis must, at a minimum, show the circumstances that constituted the probation violation.

In addition to the problem discussed above, we are troubled by several other aspects of the plea proceeding. First, the reference to "files" is unclear. From the record, it appears that the court informed defendant that he could receive two four-year sentences for possession of marijuana charges and two consecutive fourteen-year sentences for uttering and publishing charges, yet defendant was ultimately sentenced on four uttering and publishing charges and one uttering and publishing (violation of probation) charge. Furthermore, there is nothing on record to suggest that defendant received written notice of the alleged violation as required by MCR 6.445(B)(1).

Defendant raises several other arguments on appeal relating to the probation revocation and sentencing procedures. Since we conclude that defendant's plea must be vacated, we find it unnecessary to address these other issues.

Vacated and remanded.

/s/ Peter D. O'Connell

/s/ Roman S. Gibbs

/s/ Michael R. Smolenski