

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DANIEL A. SPADORICIA,

Defendant-Appellant.

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UNPUBLISHED

February 11, 2000

No. 209086

Muskegon Circuit Court

LC No. 96-139111-FH

Before: Markey, P.J., and Murphy and R.B. Burns\*

PER CURIAM.

Defendant pleaded guilty but mentally ill to indecent exposure as a sexually delinquent person. MCL 750.335a; MSA 28.567(1) and MCL 750.10a; MSA 28.200(1). He was sentenced to one day to life in prison, pursuant to MCL 750.335a; MSA 28.567(1). He appeals by delayed leave granted. We vacate the judgment of sentence and remand to allow the prosecution an opportunity to supply a missing element of the crime. MCR 6.303.

Defendant first claims that his sentence of one day to life imprisonment is disproportionately harsh under the circumstances of this case. We disagree. This Court reviews a trial court's sentencing decision for "an abuse of discretion." *People v Castillo*, 230 Mich App 442, 447; 584 NW2d 606 (1998). An abuse of discretion will be found where the sentence imposed does not reasonably reflect the seriousness of the circumstances surrounding the offense and the offender. *People v Milbourn*, 435 Mich 630, 636; 461 NW2d 1 (1990). The record indicates that defendant has a lengthy history of indecent exposure. Additionally, he has previously been convicted of indecent exposure as a sexually delinquent person. Prior attempts to rehabilitate defendant have failed and a vulnerable segment of our society, teenage girls, is in need of protection from defendant's actions. Under these circumstances, defendant's sentence is proportionate to the seriousness of the circumstances surrounding the offense and the offender. The sentence is also one that our Legislature has deemed appropriate under the circumstances of this case. *People v Murphy*, 203 Mich App 738, 744-745; 513 NW2d 451 (1994). Accordingly, the trial court did not abuse its discretion in sentencing defendant to one day to life imprisonment. *Milbourn, supra* at 636.

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

We find defendant's second claim meritorious. Defendant argues that his plea of guilty but mentally ill is invalid as a matter of law because the trial court failed to make a finding of lack of insanity, as required by MCR 6.303, and failed to review a report from the Center for Forensic Psychiatry (CFP) prior to accepting the plea, as required by MCL 768.36(2); MSA 28.1059(2). Upon review of the record, we agree that the trial court did not make the requisite finding regarding insanity as required by MCR 6.303 and MCL 768.36(2); MSA 28.1059(2). Thus, the record does not establish adequate support for a finding of lack of insanity because defendant pled guilty before the report on defendant's criminal responsibility was completed by the forensic center. The report has not been submitted to the trial court and there has been no determination as to whether defendant was "mentally ill, but not insane, at the time of the offense . . . ." MCR 6.303. "The judge may not accept a plea of guilty but mentally ill until, with the defendant's consent, he has examined the report or reports prepared pursuant to section 20a, has held a hearing on the issue . . . and is satisfied that the defendant was mentally ill at the time of the offense . . . ." MCL 768.36(2); MSA 28.1059(2).

If an essential element is not established at a plea hearing, the prosecutor may be given an opportunity to supply the missing element. *Guilty Plea Cases*, 395 Mich 96, 129; 235 NW2d 132 (1975); *People v Blue*, 428 Mich 684, 697; 411 NW2d 451 (1987). In *People v Guilmette*, 431 Mich 888; 432 NW2d 169 (1988), our Supreme Court found that the factual bases for the defendant's pleas were inadequate because of a missing element. The Court vacated the judgments of this Court and the trial court, and set forth the procedure to be followed where a remand is required to establish an adequate factual basis:

On remand the prosecutor must be given an opportunity to establish the missing element. If the prosecutor is able to do so and there is no contrary evidence, the trial court is to reinstate the judgments of conviction. If the prosecutor is unable to establish the missing element, the judgments of conviction are to remain vacated. If contrary evidence is produced, the matter is to be treated as a motion to withdraw the guilty pleas and the court is to decide the matter in the exercise of its discretion. MCR 6.101(F)(6). [*Id.*]

Judgment vacated. This case is remanded for proceedings consistent with the procedure set forth in *Guilmette, supra*.

Vacated and remanded. We do not retain jurisdiction.

/s/ Jane E. Markey  
/s/ William B. Murphy  
/s/ Robert B. Burns