

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ABRAHAM SAFFOLD, a/k/a THOMAS DAVIS,

Defendant-Appellant.

UNPUBLISHED

March 28, 2000

No. 217802

St Joseph Circuit Court

LC No. 97-008818-FH

Before: Wilder, P.J., and Sawyer and Markey, JJ.

MEMORANDUM.

Defendant appeals by delayed leave granted his guilty plea based conviction for receiving and concealing stolen property, MCL 750.535; MSA 28.803. Defendant was sentenced as a fourth offense habitual offender, MCL 769.12; MSA 28.1084, to twelve to forty years' imprisonment. We reverse.

During plea proceedings, defendant was advised of his rights in an extended dialogue with the trial court. However, defendant was not advised on the presumption of innocence. After sentencing, defendant moved to withdraw his plea on this ground. The trial court denied the motion, and this Court granted defendant's delayed application for leave to appeal.

MCR 6.302(B)(3)(c) requires a trial court to directly advise a defendant of the presumption of innocence on the record before accepting a guilty plea. The purpose of the exchange is to ensure that the defendant understands the rights waived by a guilty plea. *People v Richardson*, 144 Mich App 616; 376 NW2d 167 (1985). A defendant's past waiver or knowledge of his rights does not meet this obligation. In re *Guilty Plea Cases*, 395 Mich 96, 121; 235 NW2d 132 (1975).

The prosecutor asserts that the right to presumed innocence is not a right recognized in *People v Jaworski*, 387 Mich 21; 194 NW2d 868 (1972), and that failure to specifically instruct should not require reversal. This Court rejected this argument in *People v Heintzelman*, 142 Mich App 94; 368 NW2d 903 (1985), noting that reversal was required following *People v Lawrence*, 413 Mich 866; 317 NW2d 856 (1982), and *People v Mitchell*, 125 Mich App 475; 336 NW2d 31 (1983), as well as *Guilty Plea Cases*, *supra*.

Failure to instruct on the presumption of innocence at the time of the plea taking requires reversal. The fact that the court instructed the jury on the presumption of innocence earlier in the proceedings does not satisfy the requirement of the court rule. *Guilty Plea Cases, supra*. The trial court erred in denying defendant's motion to withdraw his guilty plea.

We reverse.

/s/ Kurtis T. Wilder
/s/ David H. Sawyer
/s/ Jane E. Markey