

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

SUNG SIK HWANG,

Defendant-Appellee.

UNPUBLISHED

December 26, 2000

No. 224728

Oakland Circuit Court

LC No. 99-166038-FH

Before: Bandstra, C.J., and Fitzgerald and D. B. Leiber*, JJ.

MEMORANDUM.

Plaintiff appeals by delayed leave granted defendant's plea-based conviction for operating under the influence of intoxicating liquor, second offense, MCL 257.625(1); MSA 9.2325(1). We reverse. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant was charged with OUIL, third offense. Defendant moved to quash the information, asserting that he did not knowingly and intelligently waive the right to counsel in one of the predicate convictions. Defendant's sister also acted as an unsworn translator during those proceedings, and it was unclear if defendant properly waived his rights. The trial court granted defendant's motion, and reduced the charge to OUIL, second offense. Defendant was sentenced accordingly.

In *People v Ingram*, 439 Mich 288, 296; 484 NW2d 241 (1992), our Supreme Court explicitly limited collateral attacks of prior pleas to convictions taken in violation of *Gideon v Wainwright*, 372 US 335; 83 S Ct 792; 9 L Ed 2d 799 (1963). Collateral attacks are limited to the use of a counselless conviction, and are not available for attacks on procedures outlined in *Boykin v Alabama*, 395 US 238; 89 S Ct 1709; 23 L Ed 2d 274 (1969), or *People v Jaworski*, 387 Mich 21; 194 NW2d 868 (1972). The validity of a plea where defendant was represented by an attorney or intelligently waived the right to counsel is unassailable. *Ingram, supra* at 295.

Under both the federal and state constitutions, a defendant accused of a misdemeanor is entitled to appointed trial counsel only if he is actually imprisoned for the offense. *People v Reichenbach*, 459 Mich 109, 120; 587 NW2d 1 (1998). Thus, defendant's 1991 conviction for

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

OUIL was not constitutionally infirm on this ground. Neither the federal nor state constitution is offended by use of prior uncounseled misdemeanors under sentencing enhancement statutes. *Id.* at 124. The fact that the defendant had not been advised of the right to the appointment of counsel did not warrant collateral attack on his prior conviction.

Following *Reichenbach*, the trial court erred in dismissing the OUIL, third offense charge. Defendant's conviction is vacated, and the matter remanded for reinstatement of the original charges. We do not retain jurisdiction.

/s/ Richard A. Bandstra

/s/ E. Thomas Fitzgerald

/s/ Dennis B. Leiber