Michigan Law Review

Volume 47 | Issue 4

1949

CRIMINAL LAW-WITHDRAWAL OF A PLEA OF GUILTY

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CRIMINAL LAW — WITHDRAWAL OF A PLEA OF GUILTY — Defendant pleaded guilty to a charge of statutory rape. After questioning him the court accepted his plea, and sentence was deferred pending an investigation by the probation and psychopathic departments. Before being sentenced, defendant requested that his plea be changed but did not deny that he was guilty. The court refused his request and sentenced him. *Held*, defendant should have been allowed to withdraw his plea of guilty. *People v. Anderson*, 321 Mich. 533, 33 N.W. (2d) 72 (1948).

When a defendant pleads guilty, it is generally within the discretion of the trial court to permit the plea to be withdrawn.[1] While some courts hold this discretion is not subject to review,[2] generally reversal will follow where an abuse of discretion is shown,[3] even though such abuse does not amount to a denial of due process.[4] The same rule as to withdrawal usually pertains whether the request

[10] King v. State, 157 Tenn. 635, 11 S.W. (2d) 904 (1928) (crime of driving while intoxicated was considered to be malum in se, and the court held that an intent to injure could be inferred from this fact); see also Commonwealth v. Adams, 114 Mass. 323 (1873).

[11] It is generally held that while violation of a statute or ordinance may be some evidence of recklessness, this alone will be insufficient from which to infer an intent to injure. State v. Schutte, 88 N.J.L. 396, 96 A. 659 (1916). But some courts do find it to be sufficient. See State v. Sudderth, 184 N.C. 753, 114 S.E. 828 (1922); Fishwick v. State, 33 Ohio C.C. 63, 14 Ohio C.C. (n.s.) 368 (1911); De Lisa v. Scott, 47 Ohio App. 503, 192 N.E. 174 (1934). These cases do not, however, attempt to eliminate the element of intent from the operative facts of criminal assault.

[12] For example, see Vernon's Tex. Penal Code Ann. (1936), Art. 1149, defining "Assault with a Motor Vehicle" to include acts of negligence.

[1] 20 A.L.R. 1445 at 1445 (1922); 66 A.L.R. 628 at 628 (1930).

[2] Clark v. State, 57 N.J.L. 489, 31 A. 979 (1895).

[3] People v. Carzoli, 340 Ill. 587, 173 N.E. 141 (1930) (judge threatened prisoner with severe sentence if he did not plead guilty); Nickels v. State, 86 Fla. 208, 98 S. 502 (1923) (plea induced by mob threats); People v. Moore, 342 Ill. 316, 174 N.E. 386 (1930) (judge induced plea with promise of leniency and failed to keep promise); Harris v. State, 203 Ind. 505, 181 N.E. 33 (1932) (defendant not advised that he could have counsel); State v. Poglianich, 43 Idaho 409, 252 P. 177 (1927) (appointment of inexperienced or indifferent attorney).

[4] The fact that there is no relation between denial of due process and abuse of discretion may be induced from the following decisions in which such an abuse was found. People v. Barnard, 296 Ill. App. 156, 15 N.E. (2d) 915 (1938) (it appeared that accused had defense worthy of consideration by jury); Hardzog v. State, 49 Okl. Cr. 244, 293 P. 1107 (1930) (reasonable ground for going to jury was offered); Salina v. Cooper, 45 Kan. 12, 25 P. 233 (1890) (plea entered while defendant was excited and did not realize what he was doing).

is made before or after judgment,[5] though some states tend to impose more stringent requirements before allowing withdrawal of a plea after judgment.[6] Statutes providing merely for withdrawal are generally interpreted to give the trial court discretionary power;[7] however, such a statute has been held to give the defendant a right to change his plea of guilty.[8] The rule announced by the court in the principal case seems to have originated with a statute which requires the judge to substitute a plea of not guilty if he has reason to doubt the truth of a guilty plea.[9] Under this statute it was held that a denial of guilt made concurrently with a request to withdraw a previous plea of guilty gave the judge reason to doubt the defendant's guilt.[10] Even though withdrawal must be requested before judgment in Michigan,[11] and the request must not be made in bad faith or solely to gain delay,[12] the decision in the principal case seems an extreme extension of the defendant's privilege. Beyond the extremely dubious philosophy of giving the criminal a "sporting chance," there appears to be no reason why a defendant, in the absence of clearer denial of guilt than that which may inhere in a request to withdraw,[13] should be permitted to withdraw a voluntary and deliberate plea of guilty.

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[5] 22 C.J.S. 645 (1940).

[6] 66 A.L.R. 628 at 631 (1930).

[7] State v. Walters, 48 S.D. 322, 204 N.W. 171 (1925); State v. Wood, 200 Wash. 37, 93 P. (2d) 294 (1939); State v. Machovec, 236 Iowa 377, 17 N.W. (2d) 843 (1945). Compare the Georgia statute which expressly confers an absolute right to withdraw a plea of guilty at any time before judgment. Ga. Penal Code, Art. 971.

[8] Ky. Cr. Code Prac., § 174 (1948); Clift v. Commonwealth, 268 Ky. 573, 105 S.W. (2d) 557 (1937); Kidd v. Commonwealth, 255 Ky. 498, 74 S.W. (2d) 944 (1934).

[9] Mich. Comp. Laws, § 768.35 (1948).

[10] People v. Utter, 209 Mich. 214, 176 N.W. 424 (1920); People v. Stone, 293 Mich. 658, 292 N.W. 520 (1940); People v. Vasquez, 303 Mich. 340, 6 N.W. (2d) 538 (1942); People v. Sheppard, 316 Mich. 665, 26 N.W. (2d) 557 (1947).

[11] People v. Goldman, 245 Mich. 578, 223 N.W. 124 (1929); People v. Vasquez, 303 Mich. 340, 6 N.W. (2d) 538 (1942).

[12] People v. Furkas, 255 Mich. 533, 238 N.W. 173 (1931).

[13] See United States v. Nordstrand Corp., (C.C.A. 2d, 1948) 168 F. (2d) 481, holding a request to withdraw a plea of guilty is not a denial of guilt.