

STATE OF MICHIGAN
IN THE 17TH JUDICIAL CIRCUIT COURT FOR THE COUNTY OF KENT

REC'D & FILED

OCT 31 1994

Kent County Clerk

THE PEOPLE OF THE
STATE OF MICHIGAN,

vs.

File No.: 93-63014-FCA

DANIEL ARTHUR TURNER,

Defendant.

SUPPLEMENTAL PLEA PROCEEDINGS

BEFORE THE HONORABLE DENNIS C. KOLENDA, CIRCUIT JUDGE

Grand Rapids, Michigan - Tuesday, February 1, 1994

APPEARANCES:

FOR THE PEOPLE:

MELODY R. LEAVENWORTH (P43183)
Assistant Prosecuting Attorney
416 Hall of Justice
Grand Rapids, MI 49503

FOR THE DEFENDANT:

ROBERT F. MIRQUE (P47391)
920 McKay Tower
Grand Rapids, MI 49503-2809

LESLIE BROWN, CSR KENT COUNTY CIRCUIT COURT
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T A B L E O F C O N T E N T S

WITNESSES: (None).

EXHIBITS: (None).

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Grand Rapids, Michigan

Tuesday, February 1, 1994

THE COURT: Go ahead.

MS. LEAVENWORTH Your Honor, this is Case Number 93-63014-FC, the People versus Daniel Arthur Turner.

The defendant appears today to plead guilty to the supplemental information. The Information should reflect that Daniel was previously convicted of child enticement, criminal sexual conduct in the first degree on two counts by a jury trial in December of 1993.

The supplemental information also reads that defendant has on a previous occasion been convicted of a felony or an attempt to commit a felony, in that on September 28 1987, in the Circuit Court for the County of Jefferson, in the State of Wisconsin, defendant was convicted of the offense of burglary, File Number 87-CR109, and has on a previous occasion, been convicted of a felony or an attempt to commit a felony, in that on October 1, 1979, in the Circuit Court for the County of Milwaukee, in the State of Wisconsin, defendant was convicted of the offense of burglary, File Number J6275. Therefore, defendant is subject to the penalties provided by MCL 769.11.

THE COURT: Mr. Turner, I take it by being

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here this morning with Mr. Mirque, that it is your intent to plead guilty to that supplemental information; is that correct?

THE DEFENDANT: I plead no contest to it.

THE COURT: What basis, Mr. Mirque, is he pleading no contest to?

MR. MIRQUE: I'm not quite sure, your Honor.

THE DEFENDANT: I'm not contesting of this.

THE COURT: Mr. Turner, let me explain a few things. First of all, a no contest plea, under Michigan law, I don't know about under Wisconsin law, is different than a guilty plea. I can take a no contest plea only if there are certain circumstances that apply. For example, that you are going to be sued, civilly, and, therefore, admitting the supplemental information runs the risk of hurting you in that regard. There are a few others that Mr. Mirque knows about. I must confess, I can't imagine which one of those applies in a supplemental information.

If you plead guilty, what I'm going to do is simply ask you, Is it true that you were convicted twice in Wisconsin. And all you have to do is tell me yes, if that's the truth, and that ends that matter. I've got to explain things, but that's what I'll ask.

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A no contest plea --

THE DEFENDANT: Pardon me a second. You explained part of what the difference is. Wisconsin doesn't have the same classification of the no contest as you have here, then that means I'll change it to guilty.

THE COURT: Okay. Let me explain a few things, Mr. Turner. Are you satisfied, number one, that you understand what is a supplemental information in Michigan? That's an allegation that you have been convicted of prior felonies and, therefore, and I'll talk about the particulars in a moment, penalties can be enhanced in a variety of ways by virtue of prior convictions.

That's, frankly, what the President and a lot of people are talking about right now in terms of three strikes and you're out and that sort of thing, we've had in Michigan for a long time in a slightly different form than that.

Now, do you understand what a supplemental information is all about?

THE DEFENDANT: Yes.

THE COURT: If you are convicted, Mr. Turner, of the supplemental information in this case, the maximum possible penalty won't change because, frankly, a life sentence, which is the possibility for the underlying convictions, can't get any longer than that. Nobody can be

sentenced to prison longer than for life.

However, a supplemental information may have some effect on your sentence, because if you get a term-of-year sentence from me, you will not be eligible for disciplinary credits, what inmates basically called good-time credits, in the same way that others will be.

It's not impossible that you get them, but other inmates earn them automatically. A person serving time as a habitual offender has to get the parole board to ask the judge to grant them and, frankly, they don't do it very often and we don't grant them very often. So, while it's not impossible, it's not real likely. So, that's one big consequence.

In addition to that, if a person is convicted as a habitual offender, the guidelines don't apply. Except in your case, since the guidelines authorize all the way up to the life sentence, if they don't apply, it doesn't make any difference because it's still a clear authority to do whatever needs doing.

And, finally, and I don't know this to be true, but I think the safe thing to do is to assume is it might be that a person convicted as a habitual offender might end up with a different prison placement, for example, than it would if they weren't. The parole might look at things differently. Again, I don't know, but you ought assume that

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to be the case. If it turns up not to be the case, no harm in assuming the worst. If it turns out to be the case, at least nobody was diluted.

Those are, as I understand it, the range of possible consequences if you are convicted of being a habitual offender, as is alleged here and, therefore, those are the consequences if you plead guilty to that. Do you understand all of that?

THE DEFENDANT: Yes.

THE COURT: One thing I want to explain is not a consequence, and that is that if you plead guilty to being a habitual offender here, and you do not, in any way, jeopardize your right to appeal the convictions rendered by that jury trial back in December. If the Court of Appeals decides that, for whatever reason, you should get a new trial with regard to that, that you plead guilty today to the habitual offender will not mean that you don't get your new trial.

If the conviction is reversed, the plea of guilty on your habitual offender charge is automatically set aside. So this won't cost you anything in terms of an appeal. Do you understand that?

THE DEFENDANT: Yes.

THE COURT: If you plead guilty to the habitual offender charge, you can't appeal anything, for all

practical purposes, about those charges, but you can still appeal the others. Do you understand that?

THE DEFENDANT: Yes.

THE COURT: Obviously, Mr. Turner, if you do, in fact, plead guilty here to the habitual offender charges, you're not going to have a trial on them. In most states, frankly, there are not separate trials to decide if somebody's a habitual offender. The judge simply looks at the record and satisfies himself or herself that the person's got a prior conviction.

In Michigan, the way our scheme is set up by the legislature, you have a right to have a trial by a jury to decide whether or not it's true, as alleged here, that you were twice convicted of burglary in Milwaukee.

At that trial, you could not contest the accuracy of the charges, meaning you couldn't argue to the jury that you were really innocent of what happened in Milwaukee, but what you could contest is that those convictions didn't happen.

If you plead guilty here today, we're not going to have that trial for the obvious reason that if you tell me you've got these two prior convictions, I hardly need convene a jury to find out whether it's true that you've got them. Do you understand that?

THE DEFENDANT: Yes.

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THE COURT: Are you willing to give up a trial?

THE DEFENDANT: Yes.

THE COURT: Now, obviously, you know that you have a right to have a jury decide the matter. You can also ask that I do it. You don't have a right that I do it, but you can ask that I do it. And if you do, and if asked, that is, and if the prosecutor and I agree, then that's how we would proceed, with me deciding everything in this matter.

Don't mistake this for a trial. I'm sure, having been through a lengthy trail of two weeks or so, you know the difference between the ten minutes we are spending here and a trial.

Are you willing to give up your right to a trial of either kind, either by a jury or by me, on this supplemental information?

THE DEFENDANT: Yes, I am.

THE COURT: Again, having been through a trial, I'm sure you recall all of the components of it, but to be safe, I want to remind you what are your rights during the course of a trial and what it is you give up by pleading guilty. Because pleading guilty gives up a trial, and by giving up a trial, obviously you are giving up all rights that would occur at a trial, were it to, in fact, occur.

Just because you've been through a trial,

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doesn't mean you may not understand something and may not have some questions. So, if you do, don't be at all embarrassed to ask Mr. Mirque or feel free to ask me. You may talk to him privately. You have to talk to me loud enough so the court reporter can hear, and if she can hear, then everybody else can hear.

You have a right, Mr. Turner, as I said, to a trial by jury in this particular matter. If you don't want a trial by jury, but would rather have me do it, you can ask for that. If you plead guilty, you give up your right to a trial of either kind. Do you understand that?

THE DEFENDANT: Yes.

THE COURT: Are you willing to give up that right?

THE DEFENDANT: Yes.

THE COURT: At a trial, were there to be one, you would be presumed innocent of the habitual offender charge, just like you were initially presumed innocent of the other charges. And it would be up to the prosecution to prove, beyond a reasonable doubt, nothing less than that, that both these convictions occurred in Milwaukee. You plead guilty here today and you give up those two rights. Do you understand that?

THE DEFENDANT: Yes, I do.

THE COURT: Are you willing to give them

up?

THE DEFENDANT: Yes.

THE COURT: At a trial, into the habitual and supplemental information, you would also have a right to have any witnesses with regard to that matter, that prior record, actually come here to testify against you live, under oath, and face-to-face. That means that the people with the records from Milwaukee would have to come here and testify, as I said, live, under oath, and face-to-face.

You would have the right to cross examine all of them. That means have Mr. Mirque question them, like you saw him question all of the other witnesses at the first trial, to test the truthfulness, the accuracy, and the completeness of whatever they say about this prior history.

In addition to that, you would have the right to have me as the judge order any witnesses you have for your defense to appear. That means we'll subpoena your witnesses just like we subpoena prosecution witnesses. You just give me their names, and no questions asked, they will be subpoenaed, if we can find them. And if they don't show up in response to a subpoena, the police will be sent out to get them and bring them here just as I would do that for the prosecution if one of their witnesses didn't show up.

You plead guilty, however, and you give up those rights, too. Do you understand that?

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THE DEFENDANT: Yes.

THE COURT: Are you willing to give them up?

THE DEFENDANT: Yes.

THE COURT: At a trial, were there to be one, you would also have the absolute right to remain silent, which means you wouldn't have to testify, say or do a thing. If you exercised that right, nobody would hold that exercise against you because that's just as much your right as is the right to remain silent. It wouldn't be a right to remain silent if when you exercised it we held it against you, so we just don't.

You would, however, have a right to testify, to tell your story. If that's what you did, you would be treated like everybody else who testifies here, no differently. If you plead guilty this morning, then you give up those rights, along with the others we've talked about. Do you understand that?

THE DEFENDANT: Yes.

THE COURT: Are you willing to give them up?

THE DEFENDANT: Yes.

THE COURT: Ms. Leavenworth, I assume there has been no plea agreement in this case. Is that correct?

MS. LEAVENWORTH: That's my understanding.

THE COURT: Mr. Mirque, is that correct?

MR. MIRQUE: That's correct, your Honor.

THE COURT: Mr. Turner, has anybody promised you anything to get you to admit this supplemental information?

THE DEFENDANT: No.

THE COURT: Has anybody threatened you to get you to plead guilty to it?

THE DEFENDANT: No.

THE COURT: If you do plead guilty here in a moment, will that plea, although I hope taking into account the advice from counsel and maybe family and friends, in the end, be your decision?

THE DEFENDANT: Yes, it is my decision.

THE COURT: Have you got any questions for me about this matter?

THE DEFENDANT: No.

THE COURT: In light of those of responses, let me then ask, Mr. Turner, how do you plead to the allegation that by virtue of your convictions back in December, you are, under Michigan law, a third felony offender; guilty or not guilty?

THE DEFENDANT: Guilty.

THE COURT: Is it true, Mr. Turner, that

you were convicted once in 1979 and once in 1987 of burglary charges, each time, in the Circuit Court for the County of Jefferson in Wisconsin in one case and in the Circuit Court for the County of Milwaukee in the other?

THE DEFENDANT: Yes.

THE COURT: Have I complied with the rule, Ms. Leavenworth?

MS. LEAVENWORTH: Yes, you have, your Honor.

THE COURT: Mr. Mirque?

MR. MIRQUE: I believe you have, your Honor.

THE COURT: Mr. Turner, I want you to know that I haven't made any agreements or deals with anybody about a possible plea or sentence.

I'm satisfied, based on what you told me here today, and what I've seen of you while you did that, that the plea you just offered was free, voluntary, and intelligent.

I'm satisfied, based upon what you told me you did that you do indeed have the record alleged so that the convictions in front me in December constitute, under Michigan law, third offenses, for which the enhanced penalties authorized by statute are now appropriate.

I'm not going to order a presentence

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investigation with regard to this matter only because the investigation concluded thus far, the report I've already seen, clearly deals with this particular matter fully, and sentencing will take place, as scheduled, tomorrow afternoon at 1:30.

THE DEFENDANT: Okay. May I make a statement as far as these charges?

THE COURT: Go ahead.

THE DEFENDANT: All of these charges of burglaries and theft for --

THE REPORTER: You're going to have to slow down.

THE DEFENDANT: I'm going too fast.

All of my previous burglaries and thefts, they were the direct result of my contorted gender identity. In that I was attempting to improve my girlish appearance and foster my emerging female spirit during my long bouts of depression, despair, and long-term unemployment by stealing woman's clothing and make-up myself while I was still coming to grips with the tormenting anguish and anxiety of my long-term severe Gender Dysphoria, which causes mood swings from prolonged extreme depression to very high anxiety.

Although I tried to control these mood swings with alcohol and drugs, when I was younger, I have learned that the only truly effective way of doing it is to

have active involvement in cross-gender living and hormonal surgical rehabilitation. So to those charges I plea guilty.

THE COURT: Mr. Turner, having read the presentence report I am, in fact, aware of the claims by you with regard to those charges. I did also, you may recall, in the course of dealing with issues in the previous trial, read some transcripts of hearings that were held in front of the judge in at least one case in Milwaukee where that was the issue and where he made findings in that regard, so I'm --

THE DEFENDANT: Would that be the case in Jefferson County?

THE COURT: One of them in Wisconsin. I am, therefore, aware of the circumstances, and I assure you they will be taken into account tomorrow.

Just as a matter of curiosity, where is Jefferson County in relation to Milwaukee.

THE DEFENDANT: Waukesha, Jefferson.

THE COURT: I know where that is. I have relatives close by.

MR. MIRQUE: Give the court reporter a copy of this so she can follow what you read from. Where is it that you read. From here to here.

THE DEFENDANT: Okay.

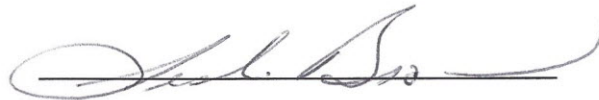
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STATE OF MICHIGAN)

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COUNTY OF KENT)

I, Leslie Brown, CSR, do hereby certify this to be a true, accurate, and complete transcript in the aforementioned case on the aforementioned date, comprised of Pages 1 through 15, inclusive.



Leslie Brown CSR

Court Reporter

Hall of Justice

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