

STATE OF MICHIGAN
IN THE SUPREME COURT
Appeal from the Michigan Court of Appeals
GLEICHER, P.J., and M.J. KELLY and CAMERON, J.J.

PEOPLE OF THE STATE OF MICHIGAN, Supreme Court No. 158065

Plaintiff-Appellee,

Court of Appeals No. 333997

v

Mecosta Circuit Court Nos. 14-
8297-FH; 15-8431-FH

KELLY CHRISTOPHER WARREN,

Defendant-Appellant.

_____ /

JOINT APPENDIX

Appendix Index

October 14, 2015 Plea Hearing Transcript	A
January 13, 2016 Sentencing Transcript	B
Judgment of Sentence (No. 14-8297-FH)	C
Judgment of Sentence (No. 15-8431-FH)	D
July 1, 2016 Mecosta Circuit Court Opinion & Order	E
July 25, 2017 Michigan Supreme Court Remand Order	F
May 17, 2018 Michigan Court of Appeals Opinion	G
March 27, 2019 Michigan Supreme Court Grant Order	H
Register of Actions (Case No. 14-8297-FH)	I
Register of Actions (Case No. 15-8431-FH)	J

Appendix A

October 14, 2015 Plea Hearing Transcript

STATE OF MICHIGAN

IN THE 49TH CIRCUIT COURT FOR THE COUNTY OF MECOSTA

PEOPLE OF THE STATE OF MICHIGAN,

V

Circuit Court File No. 14-8297-FH

KELLY CHRISTOPHER WARREN,

Defendant.

PEOPLE OF THE STATE OF MICHIGAN,

V

Circuit Court File No. 15-8431-FH

KELLY CHRISTOPHER WARREN,

Defendant.

FELONY PLEA HEARING

BEFORE THE HONORABLE PETER M. JAKLEVIC, ACTING CIRCUIT COURT JUDGE

Big Rapids, Michigan - Wednesday, October 14, 2015

APPEARANCES:

For the People: MS. AMY C. CLAPP (P67451)
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400 Elm Street
Big Rapids, Michigan 49307
(231) 592-0141

For the Defendant: MR. DENNIS L. DuVALL (P60586)
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(231) 796-4510

Transcribed by: STEPHANIE LINTEMUTH, CER 8853
Certified Electronic Recorder
(231) 592-0102

TABLE OF CONTENTS

WITNESSES: PEOPLE

NONE

WITNESSES: DEFENDANT

NONE

EXHIBITS:

NONE

1 Big Rapids, Michigan

2 Wednesday, October 14, 2015 - 2:23 p.m.

3 THE COURT: Two cases so entitled People versus
4 Kelly Warren. One is file 14-8297-FH; the other is 15-8431-
5 FH.

6 The Court recognizes Ms. Amy Clapp on behalf of the
7 People and Mr. Dennis DuVall on behalf of Mr. Warren.

8 How are we proceeding today, Ms. Clapp?

9 MS. CLAPP: It's my understanding the Defendant is
10 going to be tendering a guilty plea in both files to the
11 operating while intoxicated third offense charge and the
12 remaining complaints would be dismissed.

13 THE COURT: Mr. DuVall?

14 MR. DuVALL: Your Honor, that is a complete and
15 accurate statement of our intentions.

16 THE COURT: All right. And each of the charges
17 carries with it, absent the habitual, is a five year maximum
18 charge; is that correct, folks?

19 MS. CLAPP: Yes.

20 MR. DuVALL: Yes.

21 THE COURT: All right. You're Mr. Warren?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: Mr. Warren, could I get you to raise
24 your right hand, please.

25 Do you solemnly swear or affirm the testimony you're

1 about to give will be the truth, the whole truth, and nothing
2 but the truth so help you God?

3 THE DEFENDANT: Yes, sir.

4 KELLY CHRISTOPHER WARREN

5 (At 2:24 p.m., sworn by the Court, testified as
6 follows)

7 THE COURT: Did you hear the statement of the plea
8 agreement, sir?

9 THE DEFENDANT: Yes.

10 THE COURT: Do you understand it?

11 THE DEFENDANT: Yes.

12 THE COURT: Are you accepting it?

13 THE DEFENDANT: Yes.

14 THE COURT: Let's see here, do you understand, sir,
15 let me just go over a few things with you here. Do you
16 understand, sir, that by pleading guilty in these two cases,
17 you are not going to have a trial of any kind and you'll be
18 giving up all those rights you'd ordinarily have at a trial?
19 Do you understand that?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: Let me go over those rights with you
22 now. You'd be giving up the right to have a trial by jury;
23 the right to be presumed innocent; the right to have the
24 Prosecuting Attorney prove your guilt beyond a reasonable
25 doubt; the right to cross-examine witnesses against you; the

1 right to have the court order witnesses to appear on your
2 behalf and to question them; the right to remain silent and
3 not have that silence used against you; and the right to
4 testify at trial if you so desire. So by pleading guilty in
5 these two cases, you're not going to have a trial of any kind
6 and you're giving up each and every one of those rights. Do
7 you understand that?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: And that's what you want to do?

10 THE DEFENDANT: Yes.

11 THE COURT: Is this your own free and voluntary
12 choice to plead guilty to these charges?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: If this plea is accepted you'll be
15 giving up any claim that this plea was the result of promises
16 or threats that were not disclosed here today or that it was
17 not your free and voluntary choice to enter these pleas. Do
18 you understand that?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: Do you understand any appeal from these
21 convictions will be by application for leave to appeal and not
22 by right?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: Has anyone promised you anything beyond
25 what's in this plea agreement or beyond what we've talked

1 about here on this record to get you to plead guilty in these
2 cases?

3 THE DEFENDANT: No, sir.

4 THE COURT: Has anyone threatened you in any way?

5 THE DEFENDANT: No, sir.

6 THE COURT: Is it your own free and voluntary choice
7 to enter these pleas?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: How do you -- let's start with the --
10 the first file, 14-8297, how do you plea to the charge of
11 operating while intoxicated third offense?

12 THE DEFENDANT: Guilty.

13 THE COURT: And in file 15-8431, how do you plea to
14 the charge of operating while intoxicated third offense?

15 THE DEFENDANT: Guilty.

16 THE COURT: Let's see here -- I'm looking for the
17 information here and I don't believe I have it. Does anyone
18 have a copy of an information?

19 MS. CLAPP: We could give the Court a couple here --
20 which -- which case are you doing right now?

21 THE COURT: Wait -- wait -- I take that back. I'll
22 go off the complaint. I don't -- I don't see the information
23 in my file. I'm assuming the complaint and the information
24 are the same. All right.

25 Let's start with the 14 file and we'll direct your

1 attention, sir, to November 29th, 2014, Big Rapids Township,
2 county of Mecosta. Were you operating a motor vehicle on that
3 day?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: And this was at a parking lot open to
6 the public on Isabella Drive; is that right?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: Prior to your operation of that motor
9 vehicle, had you been drinking alcohol?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: How much did you have to drink and over
12 what time period?

13 THE DEFENDANT: A pint within two hours.

14 THE COURT: Okay.

15 MR. DuVALL: A .08 and a .09 is what I have, Your
16 Honor.

17 THE COURT: All right. Thank you. Blood alcohol
18 results -- neither you nor your client are contesting the
19 accuracy of those results, Mr. DuVall?

20 MR. DuVALL: We are not, Your Honor.

21 THE COURT: All right. Do you believe I have a
22 sufficient factual basis for the underlying charge?

23 MS. CLAPP: Yes.

24 MR. DuVALL: Yes, Your Honor.

25 THE COURT: All right. The complaint -- or the

1 information, goes on to say that you've previously been
2 convicted of two or more offenses involving drinking and
3 driving. It says that in December of 1992, in the Stanton
4 District Court, you were convicted of operating under the
5 influence. In March of 1995 in the Newaygo County District
6 Court, you were convicted of operating under the influence.
7 In June of 1997 in the Newaygo County District Court, you were
8 convicted of operating under the influence or operating with
9 an unlawful blood alcohol level. Then there's one in May of
10 2006, again in the Newaygo County court, you were convicted of
11 operating while intoxicated. Do you acknowledge those prior
12 convictions, sir?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: So this is at least your third prior
15 conviction; is that correct?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: All right. I do believe I have a
18 sufficient factual basis for the acceptance of the plea in
19 this file. Mr. DuVall, would you agree?

20 MR. DuVALL: I would agree, Your Honor.

21 MS. CLAPP: I do as well, Your Honor.

22 THE COURT: All right. Let's turn to your other
23 file and establish the factual basis as -- as well in that
24 case.

25 This one we'll direct your attention to June 6th,

1 2015, Big Rapids Township, county of Mecosta. You were
2 operating a motor vehicle on that day; correct?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: This was on Woodward Avenue, which is a
5 place open to the public or a public street or highway?

6 THE DEFENDANT: Yes.

7 THE COURT: Prior to your operation of the motor
8 vehicle on that day, had you been drinking alcohol?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: And how much did you have to drink and
11 over what time period?

12 THE DEFENDANT: Approximately a fifth.

13 THE COURT: Okay. Blood alcohol results -- I have a
14 PBT of a .18.

15 MR. DuVALL: There's a blood for a .17, Your Honor.

16 THE COURT: Blood -- neither you nor your client are
17 contesting the accuracy of those results?

18 MR. DuVALL: No, Your Honor.

19 THE COURT: As far as the priors go, sir, we've
20 already gone over that in your other case that you do -- this
21 is at least your third drinking and driving related offense.
22 So I'm going to find that a sufficient factual basis has been
23 set forth for this particular charge.

24 Counsel, would you agree?

25 MR. DuVALL: I would agree.

1 MS. CLAPP: Yes.

2 THE COURT: All right. Now that we have that out of
3 the way, is Counsel aware of any promises, threats, or
4 inducements not on this record?

5 MS. CLAPP: No, Your Honor.

6 MR. DuVALL: No, Your Honor.

7 THE COURT: Has the Court complied with the court
8 rule, Rule 6.302?

9 MS. CLAPP: It has.

10 MR. DuVALL: I agree.

11 THE COURT: I'm convinced this plea is
12 understanding, voluntary, and accurate and I do accept it.

13 Sentencing -- we'll have to get a sentencing date
14 for you.

15 I'd remind you, sir, that financial assessments are
16 due at the time of your sentence.

17 I'm going to ask that you report -- that's the
18 probation department right there, that's Ms. Schweigert.

19 THE DEFENDANT: Yes.

20 THE COURT: Before you leave here today I want you
21 to report to the probation department for preparation of a
22 presentence report.

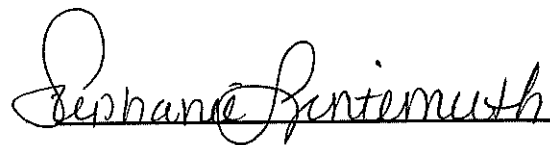
23 In the meantime we'll try to -- will you -- will you
24 contact my staff or the circuit court and we'll get a notice
25 of sentencing --

1 MR. DuVALL: I will.
 2 THE COURT: -- out to him before he leaves --
 3 MR. DuVALL: Yes.
 4 THE COURT: -- here today. All right.
 5 Anything else in these files, folks?
 6 MS. CLAPP: No. Thank you.
 7 MR. DuVALL: No. Thank you, Your Honor.
 8 THE COURT: All right. Thank you.
 9 (At 2:31 p.m., proceedings concluded)

10
 11 STATE OF MICHIGAN)
 12)
 13 COUNTY OF MECOSTA)
 14

15 I certify that this transcript, consisting of 11 pages, is a
 16 complete, true, and correct transcript of the Felony Plea Hearing
 17 and testimony taken in these cases on Wednesday, October 14, 2015.
 18

19
 20 Date: February 19, 2016


 Stephanie Lintemuth, CER 8853
 77th District Court
 400 Elm Street
 Big Rapids, Michigan 49307
 (231)592-0102

Appendix B

January 13, 2016 Sentencing Transcript

STATE OF MICHIGAN

IN THE 49TH CIRCUIT COURT FOR THE COUNTY OF MECOSTA

PEOPLE OF THE STATE OF MICHIGAN,

V

Circuit Court File No. 14-8297-FH

KELLY CHRISTOPHER WARREN,

Defendant.

PEOPLE OF THE STATE OF MICHIGAN,

V

Circuit Court File No. 15-8431-FH

KELLY CHRISTOPHER WARREN,

Defendant.

FELONY SENTENCING HEARING

BEFORE THE HONORABLE PETER M. JAKLEVIC, ACTING CIRCUIT COURT JUDGE

Big Rapids, Michigan - Wednesday, January 13, 2016

APPEARANCES:

For the People: MR. BRIAN E. THIEDE (P32796)
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WITNESSES: PEOPLE

NONE

WITNESSES: DEFENDANT

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EXHIBITS:

NONE

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Big Rapids, Michigan

Wednesday, January 13, 2016 - 2:08 p.m.

THE COURT: Let's call Mr. Warren's two cases. This is two cases so entitled People versus Kelly Christopher Warren. One is file 14-8297-FH. The other is 15-8571-FH (sic). Appearing on behalf of the People is Mr. Brian Thiede. Appearing on behalf of Mr. Warren is Mr. Dennis DuVall.

It's my understanding we are here for sentencing on both of these files here today.

Mr. DuVall, is your client prepared to proceed?

MR. DuVALL: I believe he is, Your Honor; yes.

THE COURT: All right. Have you -- I'll go to you first, Mr. Duvall. Have you had an opportunity to review the presentence report?

MR. DuVALL: Your Honor, I've had a chance to review it and I did make a copy and provide it to my client and he has had a chance to review it as well. As far as the factual material in the report, we do not have any additions or corrections that need to be made to the main body of the report.

THE COURT: Okay. And Mr. -- Mr. Thiede?

MR. THIEDE: Your Honor, I have had an opportunity to review the presentence. Other than changing the sentencing date and updating the Defendant's birthday, or age, having had a birthday since he was supposed to be sentenced, that's all

1 the additions or corrections I have to the report.

2 THE COURT: All right. Those additions will be --
3 and corrections will be noted.

4 Allocution, Mr. DuVall.

5 MR. DuVALL: Your Honor, I have represented Mr.
6 Warren for quite some time on a couple different matters. I
7 know that doesn't sound well here in the courtroom, but I've
8 gotten to know Kelly Warren not only as just a client, but
9 also as an individual. During the course of my time of
10 representing Mr. Warren, he has always maintained employment;
11 always shown up for court; keeps in contact with my office and
12 myself via cell phone and text messages. He is extremely
13 responsible when it comes to that aspect. However, when it
14 comes to alcohol and alcohol abuse, he does seem to struggle
15 with substance abuse issues. He has been going through the
16 Ten16 programming. He actually has a representative from
17 Ten16 here with him, in support of him. He also indicated to
18 me that he's been looking into inpatient counseling programs
19 and there's one that actually would take him as soon as
20 funding becomes available. So he's trying to do what he can
21 to address that issue.

22 In the time I've known Mr. Warren, he does very,
23 very well while he is on probation, at least during the time
24 that I have represented him. He also does very, very well on
25 tether. I cannot think of a time that he has been on tether

1 and has violated a scam tether requirement as far as
2 reporting or even dropping dirty. So there are avenues that
3 the Court could take in imposing a sentence for Mr. Warren
4 that would allow him to remain local and to do some of those
5 alternative programming and still give society and the
6 citizens some sort of a guarantee that there would not be any
7 drinking or anything like that involved.

8 As far as -- you know, he -- he's your classic blue
9 collar worker. He always has been. I think he always will
10 be. I think, honestly, regardless of the sentence that is
11 imposed, he will bounce back from it and get back to his
12 employment. He does take care of his family as he has been
13 for many, many years.

14 The downside to Kelly Warren is his prior history
15 and his alcohol abuse. If this was a case where this was just
16 a true third, he would be, I honestly think, one of the model
17 people going through sobriety court. Unfortunately, because
18 of his history, he is not eligible for that. And we've had
19 those discussions as well.

20 But I think when it comes to sentencing Mr. Warren,
21 we are truly asking the Court to consider imposing some sort
22 of a local sanction. His guidelines do call for a sentencing
23 range of 12 to 24 months, so it's not like I'm grasping at
24 straws here and trying to minimize some sort of a higher
25 sentencing guideline range to try to get the Court to sentence

1 below the guidelines. I'm just asking the Court to fashion a
2 sentence that in all justice would fit the circumstances and
3 would fit the circumstances for Mr. Warren and his family.

4 If I may approach, I was provided a letter from Mr.
5 Warren's employer that I did get today. If I could show it to
6 the Prosecuting Attorney and give that to you for your file,
7 Your Honor?

8 THE COURT: Yes.

9 MR. DuVALL: May I approach, Your Honor?

10 THE COURT: Yes.

11 MR. DuVALL: Thank you.

12 THE COURT: All right. Thank you.

13 This is a letter from Carolyn Marcinkewciz. I'm
14 going to -- we'll make it part of the presentence report --

15 MR. DuVALL: Thank you, Your Honor.

16 THE COURT: -- if that's what your intention is. And
17 I'll -- just let me read it real quickly here, if I could.

18 Okay. Thank you.

19 MR. DuVALL: Your Honor, with that, as I indicated
20 previously, Mr. Warren has had a chance to review the
21 presentence report. He knows what is being recommended. He
22 comes here with that understanding. But he also comes here
23 with some hopes of receiving a sentence that would allow him
24 to still maintain his employment and take care of his family.

25 And I do believe Mr. Warren would like to address

1 the Court as well when that time becomes appropriate.

2 THE COURT: All right. Well, he can go right now or
3 we can have -- hear from Mr. Thiede.

4 MR. DuVALL: Whatever the Court would like to do.

5 THE COURT: All right. Why don't you go ahead, Mr.
6 -- Mr. Thiede. I'll give you the last word here, Mr. Warren.
7 Okay?

8 THE DEFENDANT: Thank you, Your Honor.

9 THE COURT: Thank you.

10 MR. THIEDE: Your Honor, the challenge is that the
11 sentence needs to be reasonable, proportional under the new
12 standards. The guidelines aren't tentative in that regard,
13 but in what we see with people, who with records,
14 unfortunately far less than what Mr. Warren's are, the type of
15 sentence that is recommended here, this is the type of
16 sentence they get. And I think the -- the recommendation is
17 reasonable and proportional to these types of cases.

18 THE COURT: All right. Thank you, Mr. Thiede.

19 Mr. Warren, what would you like to -- to tell the
20 Court?

21 THE DEFENDANT: That I've been really hard working
22 and it opened my eyes up when I had my grandson. Now that I'm
23 a grandfather now, it's opened my eyes. And working with
24 Angie at Ten16 and stuff like that, anytime I've got any
25 problems I can call her up and she'll come out to the home.

1 And I don't want nothing to do with alcohol. I know what it
2 does to me, you know. And I love my family a lot and I
3 support them, you know. I can be a good citizen and show the
4 Court that if I'm on tether that I can be a productive
5 citizen, you know. I've never violated probation or nothing
6 like that when I was on it. There's a inpatient program
7 that's up in Baraga. I can't even think of the name now, my
8 wife knows it, but we're waiting for an answer from the Tribe,
9 the funding, that I can go in and do for 45 days too. And
10 that's all, Your Honor.

11 THE COURT: Thank you, Mr. Warren.

12 You know, you mentioned that, you know, you haven't
13 been in that much trouble on probation and I don't know if
14 there's -- I think you -- you are correct in that regard, but
15 you were on bond --

16 THE DEFENDANT: Yes, I was Your Honor.

17 THE COURT: -- when you committed one of these
18 offenses. So bond is not quite the same thing as probation,
19 but it -- it -- you know, you were sort of under the thumb of
20 the Court already when you were on bond for one of these
21 offenses when you went out and did the exact same thing. You
22 know, your attorney did a pretty good job for you getting you
23 -- you were charged, basically, with two life offenses here.
24 And your attorney -- I know your attorney has talked to you
25 about the fact that the guidelines are discretionary now.

1 There's probably some judges, if you had gone to trial and
2 been convicted of this and the habitual offender, you could
3 easily have gotten ten, 15, 20 years. No problem. A lot of
4 judges, including if I had that discretion, if you were
5 convicted at trial and then convicted as a habitual offender,
6 you'd be looking at double digits in terms of your
7 incarceration. You understand that, right?

8 THE DEFENDANT: Yes, Your Honor.

9 THE COURT: One of the things that's concerning,
10 besides the fact that you committed the same thing while you
11 were on bond, you committed another drunk driving third, is
12 your -- your previous criminal history. According to the face
13 sheet you have 11 prior felonies and 12 prior misdemeanors.
14 They run the gamut of behavior from stealing to burglary to
15 resisting/obstructing an arrest to child abuse to domestic
16 violence. You know, I -- I don't doubt that when you're sober
17 you're a pretty good guy; you're productive; you're a
18 hardworking person. But there's obviously, I've got pages and
19 pages here of when you're not that guy; when you're not that
20 good guy that you are and you appear to be in court. And, you
21 know, you're not -- you don't give a judge a whole lot of
22 discretion here when you have this kind of a history. I'm not
23 going to give you local time with this kind of a history. I
24 can't do that. It wouldn't be -- I don't think that would be
25 proportional to what you did in these two cases and your

1 history.

2 So I am going to follow the recommendation in this
3 case, sir, and I'm going to sentence you to the Department of
4 Corrections as follows: 24 months to 60 months in both files;
5 those sentences are going to run consecutively. The credit is
6 for three days served. In the 2014 case you're to pay a \$60
7 OUIL/OUID reimbursement fee; DNA fee of \$60; state costs 68;
8 crime victim assessment 130; costs 250; fine 500; attorney
9 fees of --

10 MR. DuVALL: Judge, I'd have to get those to the
11 Court for Mr. Warren.

12 THE COURT: All right.

13 MR. DuVALL: On both -- both of his files actually.

14 THE COURT: We'll have those to be determined. And
15 that's actually -- the assessments are the same in both files.
16 So you'll have those same assessments that I just mentioned in
17 the file 15-84931-FH (sic). And again, you'll get attorney
18 fees in that file as well. That is your -- those are your --
19 that is your sentence.

20 Mr. DuVall, do you have the appellate rights for Mr.
21 Warren?

22 MR. DuVALL: I have the appellate rights for the
23 8431 file, but not for the 8297 file.

24 THE COURT: Let's see if I have those. See, I
25 should have never doubted the clerk's office. All right.

1 MR. DuVALL: Your Honor, for the record I have
2 provided Mr. Warren with his appellate paperwork for both of
3 those files.

4 THE COURT: All right. Thank you.

5 MR. DuVALL: So he does have those.

6 THE COURT: Thank you, Mr. DuVall.

7 Anything else for the record, gentlemen?

8 MR. THIEDE: No. Thank you.

9 MR. DuVALL: No. I have nothing further, Your
10 Honor. Thank you.

11 THE COURT: All right. Thank you.

12 (At 2:19 p.m., proceedings concluded)

1 STATE OF MICHIGAN)

2)

3 COUNTY OF MECOSTA)

4

5 I certify that this transcript, consisting of 12 pages, is a
6 complete, true, and correct transcript of the Felony Sentencing
7 Hearing and testimony taken in these cases on Wednesday, January
8 13, 2016.

9

10 Date: February 19, 2016



Stephanie Lintemuth, CER 8853

77th District Court

400 Elm Street

Big Rapids, Michigan 49307

(231) 592-0102

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Appendix C
Judgment of Sentence (No. 14-8297-FH)

Original - Court 3rd copy - Michigan State Police CJIC
 1st copy - Corrections 4th copy - Defendant
 2nd copy - Corrections (for return) 5th copy - Prosecutor
 Approved, SCAO PAGE 1

STATE OF MICHIGAN
 49TH JUDICIAL CIRCUIT
 MECOSTA COUNTY

JUDGMENT OF SENTENCE
 COMMITMENT TO
 DEPARTMENT OF CORRECTIONS

CASE NO.
 14-008297-FH-G

ORI Court Address MECOSTA COUNTY BLDG. Court Telephone no.
 MI-540025J 400 ELM ST. 231-592-0783
 Police Report No. 7024-14 BIG RAPIDS, MI 49307

THE PEOPLE OF THE STATE OF MICHIGAN

V

Defendant name, address, and telephone no.

KELLY CHRISTOPHER WARREN
 22420 WOODWARD AVE
 BIG RAPIDS, MI 49307

CTN/TCN	SID	DOB
541400150001	1370018T	12/27/65

Prosecuting attorney's name Bar no.
 HULL, NATHAN LAVAIL, 72265

Defendant attorney's name Bar no.
 DUVALL, DENNIS L., JR. 60586

THE COURT FINDS:

1. The defendant was found guilty on 10/14/15 of the crime(s) stated below.
 Date

Count	CONVICTED BY Plea* Court Jury	DISMISSED BY*	CRIME	CHARGE CODE(S) MCL citation/PACC code
1	G		OPERATING-OUIL/PER SE OPER-OUIL/PER SE 3RD OFFN	257.6251-A 257.6256D
2		D	OPER-LIC SUSP ALLW P OPER OPER-LIC SUSP OPER-2ND/SB	257.9041B 257.9041C

*Insert "G" for guilty plea, "NC" for nolo contendere, or "MI" for guilty but mentally ill, "D" for dismissed by court, or "NP" for dismissed by prosecutor/plaintiff.

- ☐ 2. The conviction is reportable to the Secretary of State under MCL 257.625(21)(b).

Defendant's driver's license number

- ☐ 3. HIV testing and sex offender registration are completed.
☐ 4. The defendant has been fingerprinted according to MCL 28.243.
☐ 5. A DNA sample is already on file with the Michigan State Police from a previous case. No assessment is required.

IT IS ORDERED:

- ☐ 6. Probation is revoked.
 7. Participating in a special alternative incarceration unit is ☐ prohibited. ☐ permitted.
 8. The defendant is sentenced to custody of the Michigan Department of Corrections. This sentence shall be executed immediately.

Count	SENTENCE DATE	MINIMUM Years Mos. Days	MAXIMUM Years Mos. Days	DATE SENTENCE BEGINS	JAIL CREDIT Mos. Days	OTHER INFORMATION
1	1/13/16	24	60	1/13/16	3	

- ☐ 9. Sentence(s) to be served consecutively to (if this item is not checked, the sentence is concurrent.)
☐ each other. ☐ case numbers

10. The defendant shall pay:
 \$130.00 CRIME VICTIM RIGHTS \$68.00 STATE MINIMUM COST
 \$500.00 LIBRARY FUND/FINES \$250.00 CUNNINGHAM CIR CRT COSTS \$60.00 RESTITUTION
 \$60.00 DNA SAMPLE-MCSD \$1068.00 TOTAL \$1068.00 BALANCE

The due date for payment is 1/13/16. Fine, costs, and fees not paid within 56 days of the due date are subject to a 20% late penalty on the amount owed.

- ☐ 11. The concealed weapon board shall ☐ suspend for days ☐ permanently revoke the concealed weapon license, permit number , issued by County.

SEE NEXT PAGE

CC 219b (6/15) JUDGMENT OF SENTENCE, COMMITMENT TO DEPARTMENT OF CORRECTIONS

MCL 765.15(2), MCL 769.1k, MCL 769.16a, MCL 775.22, MCL 780.766, MCR 6.427

Original - Court	3rd copy - Michigan State Police CJIC	
1st copy - Corrections	4th copy - Defendant	
2nd copy - Corrections (for return)	5th copy - Prosecutor	PAGE 2
Approved, SCAO		
STATE OF MICHIGAN 49TH JUDICIAL CIRCUIT MECOSTA COUNTY	JUDGMENT OF SENTENCE COMMITMENT TO DEPARTMENT OF CORRECTIONS	CASE NO. 14-008297-FH-G

☐ 12. The defendant is subject to lifetime monitoring under MCL 750.520n.

13. Court recommendation:

DEF APP W/ ATTN DUALL, MR. THEIDE APP FROM PA OFFICE.
DEF TO PAY \$60 DNA FEE AND ATTN FEES WHEN DETERMINED.
DEF TO PAY \$60 OUIL REIMBURSEMENT. 20% LATE FEE WILL BE
ADDED TO ELIG FEES AFTER 56 DAYS. APP RIGHTS GIVEN.

Date

1-13-2011

Judge PETER M. JAKLEVIC

49075
Bar no.

I certify that this is a correct and complete abstract from the original court records.
The sheriff shall, without needless delay, deliver the defendant to the Michigan Department
of Corrections at a place designated by the department.

(SEAL)

Deputy court clerk

LAST PAGE

CC 219b (6/15) JUDGMENT OF SENTENCE, COMMITMENT TO DEPARTMENT OF CORRECTIONS

MCL 765.15(2), MCL 769.1k, MCL 769.16a, MCL 775.22, MCL 780.766, MCR 6.427

Judgment of Sentence (No. 14-8297-FH)

025a

Appendix D
Judgment of Sentence (No. 15-8431-FH)

Original - Court	3rd copy - Michigan State Police CJIC	PAGE 1
1st cc - Corrections	4th c - Defendant	
2nd cc - Corrections (for return)	5th c - Prosecutor	
Approved, SCAO STATE OF MICHIGAN 49TH JUDICIAL CIRCUIT MECOSTA COUNTY		CASE NO. 15-008431-FH-G
JUDGMENT OF SENTENCE COMMITMENT TO DEPARTMENT OF CORRECTIONS		

ORI MI-540025J Court Address MECOSTA COUNTY BLDG. 400 ELM ST. BIG RAPIDS, MI 49307 Court Telephone no. 231-592-0783
 Police Report No. 3047-15

THE PEOPLE OF THE STATE OF MICHIGAN Prosecuting attorney's name Bar no. THIEDE, BRIAN E., 32796	V	Defendant name, address, and telephone no.: KELLY CHRISTOPHER WARREN 22420 WOODWARD AVE BIG RAPIDS, MI 49307		
		CTN/TCN	SID	DOB
		541500071501	1370018T	12/27/65
Defendant attorney's name Bar no. DUVAL, DENNIS L., JR. 60586				

THE COURT FINDS:

1. The defendant was found guilty on 10/14/15 of the crime(s) stated below.
 Date

Count	CONVICTED BY Plea* Court Jury	DISMISSED BY*	CRIME	CHARGE CODE(S) MCL citation/PACC code
1	G		OPERATING-OUIL/PER SE OPER-OUIL/PER SE 3RD OFFN	257.6251-A 257.6256D
2		D	OPER-LIC SUSP ALLW P OPER OPER-LIC SUSP OPER-2ND/SB	257.9041B 257.9041C
3		D	ALCOHOL-OPEN CONTAINER	257.624A

*Insert "G" for guilty plea, "NC" for nolo contendere, or "MI" for guilty but mentally ill, "D" for dismissed by court, or "NP" for dismissed by prosecutor/plaintiff.

- ☐ 2. The conviction is reportable to the Secretary of State under MCL 257.625(21)(b).

Defendant's driver's license number

- ☐ 3. HIV testing and sex offender registration are completed.
☐ 4. The defendant has been fingerprinted according to MCL 28.243.
☐ 5. A DNA sample is already on file with the Michigan State Police from a previous case. No assessment is required.

IT IS ORDERED:

- ☐ 6. Probation is revoked.
 7. Participating in a special alternative incarceration unit is ☐ prohibited. ☐ permitted.
 8. The defendant is sentenced to custody of the Michigan Department of Corrections. This sentence shall be executed immediately.

Count	SENTENCE DATE	MINIMUM			MAXIMUM			DATE SENTENCE BEGINS	JAIL CREDIT		OTHER INFORMATION
		Years	Mos.	Days	Years	Mos.	Days		Mos.	Days	
1	1/13/16		24			60		1/13/16		3	

- ☒ 9. Sentence(s) to be served consecutively to (If this item is not checked, the sentence is concurrent.)
☐ each other. ☒ case numbers 14-8297-FH

10. The defendant shall pay:
 \$500.00 LIBRARY FUND/FINES \$130.00 CRIME VICTIM RIGHTS \$68.00 STATE MINIMUM COST
 \$1008.00 TOTAL \$250.00 CUNNINGHAM CIR CRT COSTS \$60.00 RESTITUTION
 \$1008.00 BALANCE

The due date for payment is 1/13/16. Fine, costs, and fees not paid within 56 days of the due date are subject to a 20% late penalty on the amount owed.

- ☐ 11. The concealed weapon board shall ☐ suspend for _____ days ☐ permanently revoke the concealed weapon license, permit number _____, issued by _____ County.

SEE NEXT PAGE

CC 219b (6/15) JUDGMENT OF SENTENCE, COMMITMENT TO DEPARTMENT OF CORRECTIONS

MCL 765.15(2), MCL 769.1k, MCL 769.16a, MCL 775.22, MCL 780.766, MCR 6.427

Original - Court	3rd copy - Michigan State Police CJIC	PAGE 2
1st co - Corrections	4th co - Defendant	
2nd co - Corrections (for return)	5th co - Prosecutor	
Approved, SCAO		
STATE OF MICHIGAN 49TH JUDICIAL CIRCUIT MECOSTA COUNTY	JUDGMENT OF SENTENCE COMMITMENT TO DEPARTMENT OF CORRECTIONS	CASE NO. 15-008431-FH-G

☐ 12. The defendant is subject to lifetime monitoring under MCL 750.520n.

13. Court recommendation:

DEF APP W/ ATTN Y DUVALL. DEF TO PAY \$60 OUIL REIMB. ATTN Y
FEES WHEN DETERMINED. THIS SENTENCE TO RUN CONSECUTIVELY
TO CASE 14-8297-FH. 20% LATE FEE TO BE ADDED AFTER 56 DAYS.
APP RIGHTS GIVEN.

Date

1-13-2016
I certify that this is a correct and complete abstract from the original court records.
The sheriff shall, without needless delay, deliver the defendant to the Michigan Department
of Corrections at a place designated by the department.

(SEAL)

Judge PETER M. JAKLEVIC

49075
Bar no.

Deputy court clerk

LAST PAGE

CC 219b (6/15) JUDGMENT OF SENTENCE, COMMITMENT TO DEPARTMENT OF CORRECTIONS

MCL 765.15(2), MCL 769.1k, MCL 769.16a, MCL 775.22, MCL 780.766, MCR 6.427

Judgment of Sentence (No. 15-8431-FH)

027a

Appendix E

July 1, 2016 Mecosta Circuit Court Opinion & Order

STATE OF MICHIGAN
IN THE 49TH CIRCUIT COURT FOR THE COUNTY OF MECOSTA

PEOPLE OF THE STATE OF MICHIGAN,
PLAINTIFF,

V.

File Nos. 14-8297-FH
& 15-8431-FH

KELLY CHRISTOPHER WARREN,
DEFENDANT.

Brian Thiede (P32796)
For the People
400 Elm Street
Big Rapids, Michigan 49307
(231) 592-0141

Michael C. Naughton (P70856)
For the Defendant
125 Park Street, Suite 100
Traverse City, Michigan 49684
(231) 577-1517

OPINION AND ORDER

Defendant Kelly Warren ("Defendant") was charged with two counts of Operating While Intoxicated 3rd Offense in two separate files. Defendant entered guilty pleas in both files and was sentenced January 13, 2016. Defendant was sentenced to 24 to 60 months in both files and the sentences were consecutive to one another.

Defendant motions the Court under MCR 6.310(C) to withdraw his guilty plea. Defendant argues the Court should allow him to withdraw his plea because the Court failed to advise him of the possibility of a consecutive sentence at the time he entered his guilty plea. Defendant cites to cases from other jurisdictions which hold the failure to advise a

FILED
49TH CIRCUIT COURT
COUNTY OF MECOSTA
2016 JUL 13 3:43
COUNTY CLERK

defendant of the possibility of a consecutive sentence renders the plea involuntary.

Defendant acknowledges the holding and/or statements made by the Court in People v Johnson, 413 Mich 487 (1982) are contrary to his position. But, Defendant argues the statement in Johnson regarding consecutive sentencing is dicta and/or the Due Process Clause is nevertheless implicated when the Court fails to advise a defendant of the possibility of a consecutive sentence at the time of the plea.

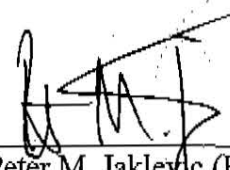
The People argue that Defendant's interpretation of the Johnson case is incorrect based on the holding in People v Lynum, 2015 WL 5568373 (Mich CA 2015), an unpublished opinion of the Court of Appeals, which specifically rejects the Defendant's argument.

This Court agrees with the People and denies the Defendant's motion to withdraw his plea. Neither MCR 6.302 nor case law in Michigan requires a Defendant to be advised of the possibility of consecutive sentencing at the time of plea entry.

In light of the issues presented and giving due consideration to the thoroughness of the pleadings filed by the parties, the Court dispenses with oral arguments under MCR 2.119(E)(3) and decides this matter on the pleadings submitted.

It is so ordered.

Date: July 1, 2016



Peter M. Jaklevic (P49075)
District Court Judge

Appendix F

July 25, 2017 Michigan Supreme Court Remand Order

Order

July 25, 2017

155002

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff-Appellee,

v

KELLY CHRISTOPHER WARREN,
Defendant-Appellant.

Michigan Supreme Court
Lansing, Michigan

Stephen J. Markman,
Chief Justice

Brian K. Zahra
Bridget M. McCormack
David F. Viviano
Richard H. Bernstein
Joan L. Larsen
Kurtis T. Wilder,
Justices

SC: 155002
COA: 333997
Mecosta CC: 15-008431-FH;
14-008297-FH


On order of the Court, the application for leave to appeal the November 1, 2016 order of the Court of Appeals is considered and, pursuant to MCR 7.305(H)(1), in lieu of granting leave to appeal, we REMAND this case to the Court of Appeals for consideration as on leave granted. Compare *People v Johnson*, 413 Mich 487, 490 (1982), with *People v Blanton*, 317 Mich App 107, 119-120 (2016).



a0717

I, Larry S. Royster, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

July 25, 2017


Clerk

Appendix G

May 17, 2018 Michigan Court of Appeals Opinion

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

KELLY CHRISTOPHER WARREN,

Defendant-Appellant.

UNPUBLISHED
May 17, 2018

No. 333997
Mecosta Circuit Court
LC Nos. 15-008431-FH;
14-008297-FH

Before: GLEICHER, P.J., and M. J. KELLY and CAMERON, JJ.

PER CURIAM.

Defendant, Kelly Warren, pleaded guilty to two counts of operating a motor vehicle while intoxicated (OWI), third offense, MCL 257.625. The trial court sentenced him to serve two consecutive terms of 24 to 60 months in prison for each conviction. See MCL 768.7b(2)(a) (permitting the imposition of a consecutive sentence for an offense committed while the defendant was on bond for a prior felony offense). Warren moved to withdraw his plea in the trial court, asserting that it was defective because he had not been advised that he might receive consecutive sentences. The trial court denied the motion, and Warren applied for delayed leave to appeal in this Court. We denied his motion,¹ and Warren applied for leave to appeal in our Supreme Court. On July 25, 2017, in lieu of granting leave, our Supreme Court remanded Warren's case to this Court for consideration as on leave granted. *People v Warren*, 500 Mich 1056 (2017). The Court directed us to compare its decision in *People v Johnson*, 413 Mich 487; 320 NW2d 876 (1982), with this Court's decision in *People v Blanton*, 317 Mich App 107; 894 NW2d 613 (2016). The question at issue is whether a trial court must advise a defendant of the possibility of discretionary consecutive sentencing as a consequence of pleading guilty or no contest. For the reasons stated in this opinion, we hold that a trial court has no such duty. Consequently, we affirm.

¹ *People v Warren*, unpublished order of the Court of Appeals, entered November 1, 2017 (Docket No. 333997).

I. BASIC FACTS

On November 29, 2014, Warren was arrested and charged with one count of OWI, third offense, and one count of operating a motor vehicle with a suspended license (subsequent offense), MCL 257.904(1). On June 6, 2015, while out on bond for the 2014 OWI, Warren was arrested and charged with another count of OWI, third offense, one count of operating a motor vehicle with a suspended license (subsequent offense), and one count of possession of an open alcohol container in a vehicle, MCL 257.624a. At a plea hearing on both cases, Warren pleaded guilty to both the 2014 OWI and the 2015 OWI in exchange for the prosecution dismissing the remaining charges. Although the trial court informed Warren of the maximum sentence possible for each OWI before accepting his guilty plea, the court did not advise him that by pleading guilty he could potentially receive a consecutive sentence. As noted above, the court sentenced Warren to 24 to 60 months for each conviction, with the sentences to be served consecutively. Warren moved to withdraw his plea, arguing that it was not voluntary and understanding because at the time he pleaded he did not know that he could receive consecutive sentences. The trial court, however, denied the motion. We must now determine whether the trial court's failure to advise Warren that a consequence of his guilty plea was the possibility of a consecutive sentence was a defect in the plea-taking process that would permit Warren to withdraw his plea.

II. WITHDRAWAL OF GUILTY PLEA

A. STANDARD OF REVIEW

We review a trial court's ruling on a motion to withdraw for an abuse of discretion. *People v Brown*, 492 Mich 684, 688; 822 NW2d 208 (2012). An abuse of discretion occurs when the trial court's decision falls outside the range of reasonable and principled outcomes. *Blanton*, 317 Mich App at 117. "Interpretation of court rules presents a question of law that we review de novo." *Id.* Questions of constitutional law are reviewed de novo. *People v Cole*, 491 Mich 325, 330; 817 NW2d 497 (2012).

B. ANALYSIS

Although a defendant has the absolute right to withdraw a plea before the trial court accepts it on the record, the ability to withdraw a plea once it is accepted is limited. MCR 6.310(A)-(B). That ability is further limited after the defendant is sentenced. MCR 6.310(C). Post-sentencing, a defendant "must demonstrate a defect in the plea-taking process" before he or she may withdraw his or her plea. *Brown*, 492 Mich at 693. Warren argues that the defect in his plea was that the court failed to advise him that a potential consequence of his plea was the imposition of consecutive sentences. We disagree.

MCR 6.302 governs the procedure the court must follow before accepting a guilty or no-contest plea. Before accepting a guilty or no-contest plea, the court must be "convinced that the plea is understanding, voluntary, and accurate." MCR 6.302(A). Relevant to this appeal, MCR 6.302(B) provides:

Speaking directly to the defendant or defendants, the court must advise the defendant or defendants of the following and determine that each defendant understands:

(1) the name of the offense to which the defendant is pleading; the court is not obliged to explain the elements of the offense, or possible defenses;

(2) the maximum possible prison sentence for the offense and any mandatory minimum sentence required by law, including a requirement for mandatory lifetime electronic monitoring under MCL 750.520b or 750.520c;

(3) if the plea is accepted, the defendant will not have a trial of any kind, and so gives up the rights the defendant would have at a trial, including the right:

(a) to be tried by a jury;

(b) to be presumed innocent until proved guilty;

(c) to have the prosecutor prove beyond a reasonable doubt that the defendant is guilty;

(d) to have the witnesses against the defendant appear at the trial;

(e) to question the witnesses against the defendant;

(f) to have the court order any witnesses the defendant has for the defense to appear at the trial;

(g) to remain silent during the trial;

(h) to not have that silence used against the defendant; and

(i) to testify at the trial if the defendant wants to testify.

(4) if the plea is accepted, the defendant will be giving up any claim that the plea was the result of promises or threats that were not disclosed to the court at the plea proceeding, or that it was not the defendant's own choice to enter the plea;

(5) any appeal from the conviction and sentence pursuant to the plea will be by application for leave to appeal and not by right.

Under the plain language of MCR 6.302, therefore, the trial court has no explicitly stated duty to advise a defendant about the possibility that, by pleading guilty or no contest, the defendant may be subject to possible consecutive sentences. In *Johnson*, our Supreme Court held that a trial court has no duty to advise a defendant about consequences not enumerated by the court rule,² including “consequences such as consecutive sentencing.” *Johnson*, 413 Mich at 490. However, in *Blanton*, this Court stated that there was a defect in the plea-taking process because the trial court failed to comply with MCR 6.302(B) when it did not advise the defendant “that by pleading guilty to felony-firearm (1) he would be sentenced to a *mandatory* two-year term of imprisonment, (2) this term of imprisonment would be served first, and (3) the concurrent sentences for armed robbery and assault with intent to commit great bodily harm would be served *consecutively* to the felony-firearm sentence.” *Blanton*, 317 Mich App at 120 (emphasis added). The *Blanton* Court asserted that it was “well settled that a trial court must inform the defendant of ‘any consecutive and/or mandatory sentencing’ requirements.” *Id.* at 119, quoting to *People v Mitchell*, 102 Mich App 554, 557; 302 NW2d 230 (1980), rev’d in part on other grounds 412 Mich 853 (1981).

At first glance, the statement in *Johnson* that the court has no duty to advise about consecutive sentencing and the statement in *Blanton* that the court must advise the defendant that he or she will be subject to mandatory consecutive sentences appear contradictory. And, as noted *supra*, our Supreme Court has directed us to compare the decisions in *Johnson* and *Blanton* as part of our analysis of this case. We discern no true conflict between *Johnson* and *Blanton*, however. Again, *Johnson* provided that the plain language in the court rule governed what consequences of a defendant’s plea the trial court had to advise the defendant about. *Johnson*, 413 Mich at 490. In accord with that reasoning, the *Blanton* Court concluded (1) the court rule expressly stated that the court had to advise the defendant about any mandatory minimum sentence he or she would have to serve as a result of his or her plea, and (2) the mandatory minimum sentence for felony-firearm was a two-year sentence to be served preceding and consecutive to the sentence on the underlying offense. *Blanton*, 317 Mich App at 118-120. In other words, the requirement to advise a defendant about *mandatory* consecutive sentences falls within the plain requirements of the court rule, and the failure to advise a defendant about *mandatory* consecutive sentences is a defect in the plea-taking process that entitles a defendant to withdraw his plea under MCR 6.310(C).

Because the consecutive sentence imposed in this case was discretionary, not mandatory, *Blanton* is inapposite. Furthermore, we also find that *Johnson* is not dispositive even though it broadly states that a court has no duty to advise about consequences such as consecutive sentences. *Johnson*, 413 Mich at 490. First, as applied to consecutive sentencing, that statement is nonbinding dicta because it was unnecessary to the resolution of the legal issue to be decided,

² When *Johnson* was decided GCR 1963, 785.7 was the court rule governing the procedure for accepting guilty pleas. Relevant to this appeal, neither the court rule in effect when *Johnson* was decided nor the current version of MCR 6.302 expressly require a trial court to advise a defendant about a *possible* consequence sentence.

see *People v Peltola*, 489 Mich 174, 190 n 32; 803 NW2d 140 (2011).³ Second, and more importantly, the rationale in *Johnson* was undermined by our Supreme Court in *Cole*, 491 Mich 332-333, 337, where the Court held that even though it was not mandated by MCR 6.302, the trial court nevertheless had a constitutional duty to advise the defendant that his plea subjected him to mandatory lifetime electronic monitoring.⁴

In *Cole*, the Court held that in order “[f]or a plea to constitute an effective waiver of [a defendant’s constitutional rights], the Due Process Clause of the Fourteenth Amendment requires the plea be voluntary and knowing,” which “might, in a given proceeding, encompass more than the explicit requirements” of the court rule. *Cole*, 491 Mich at 332-333. Thus, if a defendant is not advised of a “direct and automatic consequence of a defendant’s decision to enter a plea and forgo his right to trial” then the defendant cannot “be said to have entered an understanding and voluntary plea.” *Id.* at 327-328. However, while due process requires a court to advise a defendant about any *direct* consequences of his or her plea, there is no requirement that the court also advise the defendant of any *collateral* consequences. See *id.* at 333-335. In *People v Fonville*, 291 Mich App 363, 385; 804 NW2d 878 (2011), this Court stated that the “possibility of imposition of consecutive sentences,” is a collateral or incidental consequence of pleading guilty.

Accordingly, we conclude that the trial court did not abuse its discretion by denying Warren’s motion to withdraw his plea. There is no express requirement in MCR 6.302 that the trial court advise Warren that if he pleaded guilty then the court would have discretion to impose a consecutive sentence. And, because the possibility that a consecutive sentence *may* be imposed

³ The prosecution seems to suggest that the statement in *Johnson* is not dicta because this Court has cited it as binding in an unpublished per curiam opinion. In *People v Lynum*, unpublished per curiam opinion of the Court of Appeals, issued September 22, 2015 (Docket No. 321394); unpub op 3, this Court cited *Johnson* for the proposition that our Supreme Court “has explicitly held that a trial court is not required to offer a defendant advice . . . as to potential sentence consequences such as consecutive sentencing.” (quotation marks omitted; alteration in original). However, *Lynum* lacks precedential value because it is unpublished. MCR 7.215(C)(1). Restating dicta in a nonbinding opinion does not somehow transform a dicta statement into a binding statement. Accordingly, we find it of no consequence that *Lynum* cited *Johnson* for the proposition that a trial court need not inform a defendant of the possibility that he or she may receive a consecutive sentence.

⁴ When *Cole* was decided, the court rules did not explicitly mandate that a defendant be notified by the trial court that he would be subject to mandatory lifetime electronic monitoring under MCL 750.520c(2)(b). See *Cole*, 491 Mich at 330 n 4; see also MCR 6.302, staff comment to 2012 amendment (recognizing that the rule was amended to codify the holding in *Cole*, 491 Mich 325).

is a collateral consequence of pleading guilty, the failure to so advise Warren did not render his plea defective.⁵

Affirmed.

/s/ Michael J. Kelly

/s/ Thomas C. Cameron

⁵ Based on the record before this Court, it is not clear whether Warren's trial lawyer advised him that if he pleaded guilty the court would have discretion to impose a consecutive sentence. We recognize that a lawyer may provide constitutionally ineffective assistance if he or she fails to advise the defendant of certain consequences of a guilty or no contest plea. See *Fonville*, 291 Mich App at 394 (finding that the defendant received ineffective assistance when his lawyer failed to advise him that by pleading guilty he would have to register as a sex offender); see also *Padilla v Kentucky*, 559 US 356, 374-375; 130 S Ct 1473; 176 L Ed 2d 284 (2010) (finding that the defendant's lawyer's performance was deficient when the lawyer failed to advise the defendant that by pleading guilty he was subject to deportation). However, as Warren has not challenged the effectiveness of his trial lawyer, we will not address this issue further.

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

UNPUBLISHED
May 17, 2018

v

KELLY CHRISTOPHER WARREN,

Defendant-Appellant.

No. 333997
Mecosta Circuit Court
LC Nos. 15-008431-FH;
14-008297-FH

Before: GLEICHER, P.J., and M. J. KELLY and CAMERON, JJ.

GLEICHER, J. (*dissenting*).

The issue presented is whether defendant Kelly Warren should be permitted to withdraw his guilty plea due to the trial court's failure to advise him that he was eligible for a consecutive sentence. The majority holds that because consecutive sentencing was a "collateral" consequence of Warren's plea, the trial court had no obligation to inform him of its possible imposition. Rather than relying on an artificial distinction between "direct" and "collateral" consequences, I would hold that a possible consecutive sentence is a fact as important as the maximum penalty for each charge, and therefore an integral component of a voluntary and understanding plea.

I

Kelly Warren was charged with operating a motor vehicle while intoxicated (third offense), MCL 257.625(1), and operating a motor vehicle with a suspended license (subsequent offense), MCL 247.904(1). While on bond for these offenses, he was arrested and charged with repeating the same crimes. Warren pleaded guilty to operating a motor vehicle while intoxicated in both cases. In exchange, the prosecution dismissed the other charges and a habitual offender supplement.

At the plea hearing, the trial court inquired of counsel, "[E]ach of the charges carries with it, absent the habitual, is [sic] a five year maximum charge; is that correct, folks?" The lawyers agreed. Warren responded affirmatively to all the questions asked of him, including that he understood and accepted the plea agreement. No mention was made of a consecutive sentence.

The court sentenced Warren to two consecutive terms of 24 to 60 months' imprisonment. This means that Warren may serve 60 months (five years) on his first sentence before beginning his second sentence, which also may require him to spend five years in prison. The "five year

maximum” disclosed by the trial court was actually a 10-year maximum. Kelly pleaded guilty without knowing a sentence twice as long as he was told was within the trial court’s discretion.

II

To state the obvious, a plea bargain is a bargain. This means that a defendant gives up something (usually freedom), in exchange for something else. For most bargains, in law or in life, the “something else” is well-defined. If I hire someone to take care of my lawn all summer for an agreed price of \$500 and he instead charges me \$500 per visit, one of us did not understand the deal. The stakes are much higher in a courtroom. That is why clear and long-abiding precedent requires that a court accurately advise a defendant of the price to be paid for a guilty plea: “Waivers of constitutional rights not only must be voluntary but must be knowing, intelligent acts done with sufficient awareness of the relevant circumstances and likely consequences.” *Brady v United States*, 397 US 742, 748; 90 S Ct 1463; 25 L Ed 2d 747 (1970). Our Supreme Court specifically embraced this concept (and this exact language) in *People v Cole*, 491 Mich 325, 333; 817 NW2d 497 (2012).

In *Cole*, the Supreme Court acknowledged that other courts have created a distinction between “direct” and “collateral” consequences of a guilty plea. According to the majority, *Cole* supports that because a discretionary consecutive sentence is merely a “collateral” effect of a guilty plea, a court need not warn a defendant of its possibility. I respectfully disagree with this reading of *Cole*. Rather than adopting the “direct” and “collateral” rubric relied on by my colleagues, *Cole* reserved the issue for another day:

While there is considerable debate about the exact placement of the dividing line between the collateral and direct consequences of a plea, see *Padilla v Kentucky*, 559 US 356, [364] n 8; 130 S Ct 1473; 176 L Ed 2d 284 (2010), we need not explore this oft-nuanced distinction because we agree with the Court of Appeals that mandatory lifetime electronic monitoring is *part of the sentence itself*. [*Cole*, 491 Mich at 334-335 (emphasis in original).]^[1]

Indeed, *Cole* is entirely consonant with my position that a defendant must be informed of the *true* maximum penalty he or she faces, which includes a possible consecutive sentence:

To hold otherwise would not only offend due process, but would be inconsonant with the practical rationale underlying the requirement that a plea be knowing and voluntary. When a defendant agrees to plead guilty, he or she is making a bargain, giving up trial rights in exchange for some perceived benefit. In order for a defendant to accurately assess the benefits of the bargain being considered, the defendant must be aware of the immediate consequences that will flow directly from his or her decision. Without information about a consequence of a sentence deemed by our Legislature to be punishment, . . . it cannot be said

¹ In *Padilla*, 559 US at 364 n 8, the United States Supreme Court likewise observed that “[t]here is some disagreement among the courts over how to distinguish between direct and collateral consequences,” but found the debate irrelevant in that case.

that a defendant was aware of the critical information necessary to assess the bargain being considered. [*Id.* at 337-338.]

Nor has this Court ever held that consecutive sentencing constitutes a mere “collateral consequence” of a guilty plea. In *People v Fonville*, 291 Mich App 363, 385; 804 NW2d 878 (2011), we included the “possibility of imposition of consecutive sentences” in a long list of “[e]xamples of collateral or incidental consequences” that have been identified in other cases. But this was dictum, not a holding. And although this Court has proclaimed that “it is well settled that a trial court must inform the defendant of any ‘consecutive and/or mandatory sentencing’ requirements,”² this, too, is dicta. *People v Blanton*, 317 Mich App 107, 119; 894 NW2d 613 (2016) (citations omitted).

I am unable to locate binding Michigan authority on the question of whether MCR 6.302(B) or the due process clause requires a court to advise a defendant of the possible imposition of a discretionary consecutive sentence before accepting a guilty plea. This caselaw void explains why the Supreme Court ordered that we resolve Warren’s appeal by “consider[ing]” both *Blanton* and *People v Johnson*, 413 Mich 487; 320 NW2d 876 (1982), which focused on the court rule governing the procedure for accepting guilty pleas. *People v Warren*, 500 Mich 1056 (2017). Rather than evaluating the question presented based on nonbinding or tangential precedent, I would evaluate Warren’s argument on a clean slate.

Before accepting a guilty plea, a court “must advise the defendant . . . and determine that each defendant understands . . . the maximum possible prison sentence for the offense and any mandatory minimum sentence required by law[.]” MCR 6.302(B)(2). In *People v Brown*, 492 Mich 684, 693-694; 822 NW2d 208 (2012) the Supreme Court construed this language to mandate that “before pleading guilty, a defendant must be notified of the maximum possible prison sentence with habitual-offender enhancement because the enhanced maximum becomes the ‘maximum possible prison sentence’ for the principal offense.” The Court explained that “[b]y not telling a defendant the potential maximum sentence” that could be imposed due to the defendant’s habitual-offender status, a court fails to advise the defendant of “the true potential maximum sentence.” *Id.* at 694 (quotation marks and citation omitted). Informing a defendant of the habitual penalty “accurately reflects the intent of MCR 6.302(B)(2),” the Court explained. *Id.*

The “true potential maximum sentence” faced by a defendant eligible for consecutive sentencing is a total sentence that is substantially longer than the maximum term of concurrent sentences. Here, Warren faces a total of 120 months’ imprisonment due to the consecutive nature of his sentences. Had he been sentenced to concurrent terms, his maximum would have been 60 months in prison. It seems to me obvious that MCR 6.302(B)(2) requires notice to a

² In support of this proposition, the Court cited *People v Mitchell* 102 Mich App 554, 557; 302 NW2d 230 (1980), rev’d in part on other grounds 412 Mich 853 (1981). But *Mitchell* actually held that a court must advise a defendant only of “consecutive and/or mandatory sentencing . . . ordered by statute.” *Id.* (emphasis added). Here, consecutive sentencing is discretionary.

defendant of a sentencing possibility that could vastly change the amount of time that he or she must serve.³

Due process principles compel the same result. A number of courts have held that in order for a plea to be knowingly and voluntarily entered, a defendant must be told of the possibility of consecutive sentencing. The Iowa Supreme Court reached this conclusion by determining that sentences to be served consecutively qualify as “a direct consequence of a guilty plea,” despite that the Court disavowed any reliance on the direct/collateral consequence rubric. *State v White*, 587 NW2d 240, 243 (Iowa, 1998) (“We are not here concerned with the much adjudicated distinction between direct and collateral consequences.”) The Court further reasoned that without knowledge of the possibility of consecutive sentencing a defendant is “uninformed and unenlightened,” as he does not know “the true maximum punishment” that may result from a consecutive sentence. *Id.* at 246.

The Pennsylvania Supreme Court has likewise concluded that before accepting a guilty plea, a court must inform the defendant that consecutive sentences might be imposed. *Commonwealth v Persinger*, 532 Pa 317; 615 A2d 1305 (1992). An unadvised defendant does not know “the *maximum* punishment that might be imposed for his conduct,” which means “the total aggregate sentence.” *Id.* at 323 (emphasis in original). Both the Iowa and the Pennsylvania Supreme Courts pointed out that the American Bar Association Standards for Criminal Justice recommend that a defendant be informed of “the maximum possible sentence on the charge, including that possible from consecutive sentences. . . .” 3 ABA Standards for Criminal Justice (2d ed), Standard 14-1.4.⁴

The “direct/collateral” consequence formulation embraced by the majority requires a court to inform a defendant only of definite, immediate, or automatic consequences of a plea. This formulation leaves out indefinite, long-term, and discretionary consequences that may be equally important. To make sense of a plea bargain, a defendant should be informed of sentencing choices available to a court that likely would factor prominently in a defendant’s guilty plea decision process. See Roberts, *The Mythical Divide Between Collateral and Direct Consequences of Criminal Convictions: Involuntary Commitment of “Sexually Violent Predators”*, 93 Minn L Rev 670 (2008). Because the maximum length of possible imprisonment is a fact that would reasonably enter into such a calculation, I would hold that due process principles require that a court share this information with a defendant before accepting his or her

³ *Blanton*, 317 Mich App at 337, posits that “[g]iven the nature of the plea-bargaining process in Michigan,” a “contractual approach” to sorting out guilty-plea controversies is appropriate. Consideration is an essential element of a contract. Just as I would not knowingly and voluntarily sign a contract obligating me to pay \$500 per mowing session, a defendant facing prison should not be forced to guess whether he is at risk of spending 10 years there instead of five.

⁴ The Colorado Supreme Court adopted the ABA Standards in *People v Randolph*, 175 Colo 454; 488 P2d 203 (1971). In *People v Peters*, 738 P2d 395, 396 (Colo Ct App, 1987), the Colorado Court of Appeals specifically acknowledged that “[i]ncluded in those standards . . . is the requirement that the court inform a defendant: ‘of the maximum possible sentence on the charge, including that possible from consecutive sentences.’ ” (Emphasis in original.)

plea. Based on both the language of MCR 6.302(B) and a defendant's due process right to be informed about an important aspect of the law governing his sentencing, I would vacate Warren's conviction and remand to permit him to withdraw his plea.

/s/ Elizabeth L. Gleicher

Appendix H

March 27, 2019 Michigan Supreme Court Grant Order

Order

Michigan Supreme Court
Lansing, Michigan

March 27, 2019

158065

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff-Appellee,

v

KELLY CHRISTOPHER WARREN,
Defendant-Appellant.

Bridget M. McCormack,
Chief Justice

David F. Viviano,
Chief Justice Pro Tem

Stephen J. Markman
Brian K. Zahra
Richard H. Bernstein
Elizabeth T. Clement
Megan K. Cavanagh,
Justices

SC: 158065
COA: 333997
Mecosta CC: 15-008431-FH;
14-008297-FH

On order of the Court, the application for leave to appeal the May 17, 2018 judgment of the Court of Appeals is considered. We direct the Clerk to schedule oral argument on the application. MCR 7.305(H)(1).

The appellant shall file a supplemental brief within 42 days of the date of this order addressing whether, when a defendant's plea of guilty or no contest will subject him to the court's discretion to impose consecutive sentences, the court must advise the defendant of that possibility before the court may accept the plea. See US Const, Am XIV; Const 1963, art 1, § 17; MCR 6.302(B). In addition to the brief, the appellant shall electronically file an appendix conforming to MCR 7.312(D)(2). In the brief, citations to the record must provide the appendix page numbers as required by MCR 7.312(B)(1). The appellee shall file a supplemental brief within 21 days of being served with the appellant's brief. The appellee shall also electronically file an appendix, or in the alternative, stipulate to the use of the appendix filed by the appellant. A reply, if any, must be filed by the appellant within 14 days of being served with the appellee's brief. The parties should not submit mere restatements of their application papers.

The Prosecuting Attorneys Association of Michigan and the Criminal Defense Attorneys of Michigan are invited to file briefs amicus curiae. Other persons or groups interested in the determination of the issue presented in this case may move the Court for permission to file briefs amicus curiae.



t0320

I, Larry S. Royster, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

March 27, 2019

Clerk

Appendix I

Register of Actions (Case No. 14-8297-FH)

D 001 WARREN, KELLY, CHRISTOPHER DOB: 12/27/65 SEX: M RACE: W
 22420 WOODWARD AVE CTN:541400150001 TCN:P614126860K
 PRISON:1/6/20-1/6/26 SID:1370018T PIN:7024-14
 BIG RAPIDS, MI 49307 DLN:XXXXXXXXXXXX ST:XX
 ATY: DUVALL, DENNIS L., JR. PROSECUTOR: HULL, NATHAN LAVAIL,
 P-60586 231-796-4510 APPOINTED P-72265
 LOWER DISTRICT: 7700 CTY# 54 CASE# 14-44481FD PRELIM: WAIVE
 INCARCERATION DATE: DISTRICT ARRAIGNMENT: 12/01/14

B 001 ABBOTT BAIL BONDS,,
 PO BOX 782
 BATTLE CREEK, MI 49016

R 001 MCSO,, OWE \$60.00 REC \$0.00 BAL \$60.00

Bond History

Num	Amount	Type	Posted Date	Status
1	\$50,000.00	Cash/Surety	12/02/14	Cancelled

Charges

Num	Type	Charge (Pacc)	Asc/Trf	Charge Description	Offense Dt	Dsp	Evt
01	ORG	257.6251-A		OPERATING-OUIL/PER SE	11/29/14	PLG	REA
	NTC	257.6256D		OPER-OUIL/PER SE 3RD OFFN			
02	ORG	257.9041B		OPER-LIC SUSP ALLW P OPER	11/29/14	DIS	REA
	NTC	257.9041C		OPER-LIC SUSP OPER-2ND/SB			
	HAB	769.12		HABITUAL OFFENDER 4TH CON			

Assessments

Account	Ordered	Paid	Balance
CRIME VICTIM RIGHTS	\$130.00	\$30.00	\$100.00
STATE MINIMUM COST	\$68.00	\$30.00	\$38.00
LIBRARY FUND/FINES	\$500.00	\$0.00	\$500.00
CUNNINGHAM CIR CRT COSTS	\$250.00	\$0.00	\$250.00
RESTITUTION	\$60.00	\$0.00	\$60.00
DNA SAMPLE-MCSD	\$60.00	\$0.00	\$60.00
ATTORNEY FEES	\$685.80	\$0.00	\$685.80
20 PERCENT LATE FEE	\$326.76	\$0.00	\$326.76
TOTAL:	\$2,080.56	\$60.00	\$2,020.56
PAYMENT DUE: 3/28/16	LATE FEE DATE: 5/24/16		

Actions, Judgments, Case Notes

Num	Date	Judge	Chg/Pty	Event Description/Comments	
1	12/02/14	GRANT		RETURN TO CIRCUIT COURT	CLK AKJ
2			B 001	BOND POSTED (01)	CLK AKJ
3				MCSO NOTIFICATION OF OWI/OUID	CLK AKJ
				REIMBURSEMENT FILED IN THE	CLK

4 12/08/14 AMNT OF \$100 CLK
NOTICE SENT FOR: 12/19/14 1:30 PM CLK TLP
ARRAIGNMENT
HON. SUSAN HENNIGAN GRANT
/AND PRETRIAL CONFERENCE CLK
5 INFORMATION FELONY FILED CLK AKJ
6 PROOF OF SERVICE FILED CLK LMK
RE:ARRAIGNMENT 12-19-14 @ CLK
1:30PM. CLK
8 12/19/14 ARRAIGNMENT CRT AKJ
WAIVED CRT
WRITTEN WAIVER OF ARRAIGNMENT CRT
FILED CRT
7 12/22/14 NOTICE SENT FOR: 01/21/15 1:30 PM CLK TLP
SETTLEMENT CONFERENCE
9 12/23/14 PROOF OF SERVICE FILED CLK LMK
RE:SETTLEMENT CONFERENCE CLK
1-21-15 @ 1:30PM. CLK
10 01/21/15 SETTLEMENT CONFERENCE CRT AKJ
STC HELD CRT
11 01/26/15 JAKLEVIC CASE REASSIGNMENT CLK TLP
FROM: GRANT, SUSAN HENNIGAN, CLK
TO: JAKLEVIC, PETER M., CLK
12 NOTICE SENT FOR: 02/25/15 1:30 PM CLK TLP
SETTLEMENT CONFERENCE
/FINAL SETTLEMENT CONFERENCE CLK
DEFENDANT MUST BE PRESENT CLK
13 PROOF OF SERVICE FILED CLK LMK
RE:SETTLEMENT CONFERENCE CLK
2-25-15 @ 1:30PM. CLK
14 02/25/15 WAIVER OF DISQUALIFICATION CLK AKJ
FILED CLK
15 SETTLEMENT CONFERENCE CRT AKJ
STC HELD OFF RECORD CRT
16 04/09/15 NOTICE SENT FOR: 05/13/15 1:30 PM CLK TLP
SETTLEMENT CONFERENCE
/FINAL SETTLEMENT CONFERENCE CLK
DEFENDANT MUST BE PRESENT CLK
17 PROOF OF SERVICE FILED CLK LMK
RE:SETTLEMENT CONFERENCE CLK
5-13-15 @ 1:30PM. CLK
18 05/13/15 SETTLEMENT CONFERENCE CRT AKJ
FINAL STC-RESET FINAL STC 2 CRT
WKS CRT
19 05/14/15 NOTICE SENT FOR: 06/10/15 1:30 PM CLK TLP
SETTLEMENT CONFERENCE
/FINAL SETTLEMENT CONFERENCE CLK
DEFENDANT MUST BE PRESENT CLK
20 PROOF OF SERVICE FILED CLK LMK
RE:SETTLEMENT CONFERENCE CLK
6-10-15 @ 1:30PM. CLK
21 06/10/15 SETTLEMENT CONFERENCE CRT AKJ
DEF PICKED UP NEW OWI 3RD SET CRT
FOR PLEA. CRT
22 06/15/15 NOTICE SENT FOR: 07/08/15 1:30 PM CLK TLP
REARRAIGNMENT
/ENTRY OF PLEA CLK

39 10/15/15 NOTICE SENT FOR: 11/25/15 1:30 PM CLK TLP
 SENTENCING
 40 PROOF OF SERVICE FILED CLK LMK
 RE:SENTENCING 11/25/15 @ 1:30P CLK
 41 10/16/15 00001 ADJUDICATION ABSTRACT CREATED CLK AKJ
 42 11/04/15 PP TERMINATED - Not this case CLK SMM
 43 11/20/15 REMOVE NEXT EVENT: 11/25/15 1:30 PM CLK TLP
 SENTENCING
 /HRG ADJOURNED - STIP & ORDER CLK
 TO ADJOURN SUBMITTED FOR CLK
 JUDGE'S SIGANTURE CLK
 44 NOTICE SENT FOR: 12/09/15 1:30 PM CLK TLP
 SENTENCING
 /ADJOURNED FROM 11-25-15 CLK
 45 STIP AND ORDER ENTERED TO CLK AKJ
 ADJ SENT CLK
 46 PROOF OF SERVICE FILED CLK LMK
 RE:SENTENCING 12/9/15 @ 1:30PM CLK
 47 12/10/15 NOTICE SENT FOR: 01/13/16 1:30 PM CLK TLP
 SENTENCING
 /RESCHEDULED FROM 12-9-15 CLK
 48 PROOF OF SERVICE FILED CLK LMK
 RE:SENTENCING 1/13/16 CLK
 @ 1:30PM CLK
 49 STIPULATION AND ORDER ENTERED CLK LMK
 TO ADJOURN CIRCUIT COURT CLK
 SENTENCING CLK
 50 01/13/16 SENTENCING CRT AKJ
 S LINTEMUTH, #8853 CRT
 DEF APP W/ ATTNY DUVALL, MR. CRT
 THEIDE APP FROM PA OFFICE. CRT
 DEF TO PAY \$60 DNA FEE AND CRT
 ATTNY FEES WHEN DETERMINED. CRT
 DEF TO PAY \$60 OUIL REIMBURSEM CRT
 -ENT. 20% LATE FEE WILL BE CRT
 ADDED TO ELIG FEES AFTER 56 CRT
 DAYS. APP RIGHTS GIVEN. CRT

SENTENCE PRISON:	MINIMUM	MAXIMUM	CREDIT
	YYY- 24-DDD	YYY- 60-DDD	YYY-MMM- 3
BEGIN 01/13/16			
\$130.00 CRIME VICTIM RIGHTS		68.00	STATE MINIMUM COST
\$500.00 LIBRARY FUND/FINES		250.00	CUNNINGHAM CIR CRT COSTS
\$60.00 RESTITUTION		60.00	DNA SAMPLE-MCSD
51		AMENDED INFORMATION FELONY	CLK AKJ
		FILED	CLK
52		FINAL ORDER OR JUDGEMENT FILED	CLK AKJ
53		ORDER TO REMIT PRISONER FUNDS	CLK AKJ
54	B 001	BOND CANCELED (01)	CLK AKJ
55 01/15/16	00001	STATISTICAL ABSTRACT CREATED	CLK AKJ
56 01/19/16		SENTENCING INFORMATION REPORT	CLK LMK
		FILED	CLK
57		NOTICE OF RIGHT TO APPELLATE	CLK AKJ
		REVIEW AND REQUEST FOR CAA	CLK
		AFFIDAVIT OF INDIGENCY FILED	CLK
59 02/04/16		STATEMENT OF ATTNY FEES FILED	CLK AKJ
58 02/09/16		MONEY ORDERED	CRT AKJ
\$685.80 ATTORNEY FEES			

Case No.	Date	Description	Time	Agent
60	02/10/16	ORDER ENTERED REGARDING APPOINTMENT OF APPELLATE COUSEL AND TRANSCRIPT CERTIFICATE OF MAILING	CLK	LMK
61	02/12/16	REPORTER/RECORDER CERTIFICATE OF ORDERING TRANSCRIPT ON APPEAL	CLK	LMK
		S. LINTEMUTH	CLK	
		CER #8853	CLK	
62	02/19/16	NOTICE OF FILING OF TRANSCRIPT AND AFFIDAVIT OF MAILING	CLK	LMK
		S. LINTEMUTH	CLK	
		CER #8853	CLK	
63		TRANSCRIPT RECEIVED-FELONY PLEA HEARING-HELD 10/14/15	CLK	LMK
		BY JUDGE PETER M. JAKLEVIC	CLK	
64		TRANSCRIPT RECEIVED-FELONY PLEA HEARING-HELD 10/14/15 BY	CLK	LMK
		JUDGE PETER M. JAKLEVIC	CLK	
65	03/28/16	COURT ORDERED PAID	CLK	MMP
		RECEIPT# 00165895 AMT \$60.00		
66	05/25/16	ANSWER TO MOTION TO WITHDRAW	CLK	LMK
		GUILTY PLEAS FILED	CLK	
67		MEMORANDUM IN SUPPORT OF ANSWERS TO MOTION TO WITHDRAW	CLK	LMK
		GUILTY PLEAS	CLK	
68	05/27/16	MONEY ORDERED	CRT	***
		AUTOMATIC LATE FEE ASSESSMENT	CRT	
		\$326.76 20 PERCENT LATE FEE		
69	06/06/16	MOTION TO WITHDRAW GUILTY PLEAS FILED	CLK	LMK
70	06/14/16	Letter Sent - 101 - \$3,854.46	CLK	JS
71	07/01/16	OPINION AND ORDER ENTERED	CLK	LMK
72	07/12/16	Stop Send Overdue Pymt Notice	CLK	JS
73	07/15/16	OPINION AND ORDER RETURNED BY POST OFFICE-REMAILED	CLK	LMK
		OPINION AND ORDER SENT OUT 7/1/16 BY STEPHAINIE FROM DISTRICT CT.	CLK	
74	11/03/16	COURT OF APPEALS, STATE OF MICHIGAN ORDER ENTERED - APPLICATION FOR LEAVE TO APPEAL IS DENIED	CLK	LMK
75	11/28/16	MAACS STATEMENT OF SERVICE AND ORDER FOR PAYMENT OF COURT APPOINTED COUNSEL FILED	CLK	LMK
76	01/03/17	REQUEST FROM SUPREME COURT FOR ENTIRE FILE	CLK	SLK
77	08/11/17	COURT OF APPEALS, STATE OF MI ORDER ENTERED - CAUSE REMANDED TO CIRCUIT COURT TO DETERMIN DEF INDIGENCY	CLK	LMK
78	08/23/17	ORDER ENTERED REGARDING APPOINTMENT OF APPELLATE COUNSEL AND TRANSCRIPT CERTIFICATE OF SERVICE	CLK	KLH
79	08/28/17	REPORTER/RECORDER CERTIFICATE	CLK	KLH

80 10/05/17 OF ORDERING TRANSCRIPT ON CLK
APPEAL FILED. CLK
S.LINTEMUTH CER#8853 CLK
LETTER RECEIVED FROM DEF CLK LMK
RE HER APPELLATE ATTN AND CLK
CASE CLK
81 10/17/17 PEOPLE'S ANSWER TO DEFENDANT'S CLK LMK
APPEAL FILED CLK
82 05/18/18 DEF CALLED STATED SHE WAS CLK LMK
RECENTLY INCARCERATED. WILL CLK
BE ABLE TO RESUME PAYMENT PLAN CLK
ON JUNE 1, 2018. CLK
83 10/09/18 MAACS STATEMENT OF SERVICE AND CLK LMD
ORDER ENTERED FOR PAYMENT OF CLK
COURT APPOINTED COUNSEL CLK
..... END OF SUMMARY

I hereby certify this to be
a true and correct copy of
the record on file with the
MECOSTA COUNTY CLERK.
This certified copy is only
valid when the Seal and
Signature are affixed

Marcia R. Smith
MECOSTA COUNTY CLERK

4-4-19 *SM*

RECEIVED by MSC 5/7/2019 3:40:37 PM

Appendix J

Register of Actions (Case No. 15-8431-FH)

D 001 WARREN, KELLY, CHRISTOPHER DOB: 12/27/65 SEX: M RACE: W
 22420 WOODWARD AVE CTN:541500071501 TCN:P615127948J
 PRISON:1/6/20-1/6/26 SID:1370018T PIN:3047-15
 BIG RAPIDS, MI 49307 DLN:XXXXXXXXXXXX ST:XX PAPER PLATE
 PLATE:DGF8312 YEAR:2000 MAKE:ACUR
 VIN:19UUA5661YA058570
 ATY: DUVALL, DENNIS L., JR. PROSECUTOR: THIEDE, BRIAN E.,
 P-60586 231-796-4510 APPOINTED P-32796
 LOWER DISTRICT: 7700 CTY# 54 CASE# 15-45194FD PRELIM: WAIVE
 INCARCERATION DATE: DISTRICT ARRAIGNMENT: 06/08/15

B 001 ABBOTT BAIL BONDS,,

Bond History

Num	Amount	Type	Posted Date	Status
1	\$35,000.00	Cash/Surety	6/16/15	Cancelled

Charges

Num	Type	Charge (Pacc)	Asc/Trf	Charge Description	Offense Dt	Dsp	Evt
01	ORG	257.6251-A		OPERATING-OUIL/PER SE	06/06/15	PLG	REA
	NTC	257.6256D		OPER-OUIL/PER SE 3RD OFFN			
02	ORG	257.9041B		OPER-LIC SUSP ALLW P OPER	06/06/15	DIS	REA
	NTC	257.9041C		OPER-LIC SUSP OPER-2ND/SB			
03	ORG	257.624A		ALCOHOL-OPEN CONTAINER	06/06/15	DIS	REA
	HAB	769.12		HABITUAL OFFENDER 4TH CON			

Assessments

Account	Ordered	Paid	Balance
CRIME VICTIM RIGHTS	\$130.00	\$80.86	\$49.14
STATE MINIMUM COST	\$68.00	\$68.00	\$0.00
LIBRARY FUND/FINES	\$500.00	\$0.00	\$500.00
CUNNINGHAM CIR CRT COSTS	\$250.00	\$12.86	\$237.14
RESTITUTION	\$60.00	\$0.00	\$60.00
ATTORNEY FEES	\$590.25	\$0.00	\$590.25
20 PERCENT LATE FEE	\$295.65	\$0.00	\$295.65
TOTAL:	\$1,893.90	\$161.72	\$1,732.18
PAYMENT DUE: 3/25/19	LATE FEE DATE: 5/21/19		

Actions, Judgments, Case Notes

Num	Date	Judge	Chg/Pty	Event Description/Comments
1	06/16/15	JAKLEVIC		RETURN TO CIRCUIT COURT CLK AKJ
3			B 001	BOND POSTED (01) CLK AKJ
2	06/19/15			INFORMATION FELONY FILED CLK AKJ
4	06/24/15			NOTICE SENT FOR: 07/08/15 1:30 PM CLK TLP
				ARRAIGNMENT

Case No.	Date	Description	Time	Page
5		/AND PRETRIAL CONFERENCE	CLK	
		PROOF OF SERVICE FILED	CLK LMK	
6	07/08/15	RE:ARRAIGNMENT 7-8-15 @ 1:30PM	CLK	
		ARRAIGNMENT	CRT AKJ	
		ADJOURNED	CRT	
		PARTIES AGREED TO DO STIP AND	CRT	
		ORDER TO DO PSI PRIOR TO PLEA.	CRT	
		PT TO BE PREPARED AND	CRT	
		SUBMITTED FOR SIGNATURE	CRT	
7	07/10/15	ORDER ENTERED DIRECTING	CLK LMK	
		PROBATION TO PREPARE	CLK	
		PRESENTENCE REPORT	CLK	
8	07/13/15	NOTICE SENT FOR: 09/09/15 1:30 PM	CLK TLP	
		SETTLEMENT CONFERENCE		
		/STATUS CONFERENCE ON PSI	CLK	
		PRIOR TO PLEA (POSSIBLE PLEA	CLK	
		& SENTENCING)	CLK	
9	07/14/15	PROOF OF SERVICE FILED	CLK LMK	
		RE:SETTLEMENT CONFERENCE	CLK	
		9-9-15 @ 1:30PM	CLK	
10	09/09/15	SETTLEMENT CONFERENCE	CRT AKJ	
		ADJOURNED	CRT	
11	09/14/15	NOTICE SENT FOR: 10/14/15 1:30 PM	CLK TLP	
		SETTLEMENT CONFERENCE		
		/RESCHEDULED FROM 9-9-15	CLK	
12		PROOF OF SERVICE FILED	CLK LMK	
		RE:SETTLEMENT CONFERENCE	CLK	
		10-14-15 @ 1:30PM	CLK	
13	10/14/15	SETTLEMENT CONFERENCE	CRT AKJ	
		STC HELD OFF RECORD-DEF TO	CRT	
		ENTER PLEA TODAY	CRT	
14		00001 REARRAIGNMENT	CRT AKJ	
		S LINTMUTH, #8853	CRT	
		PLEAD GUILTY	CRT	
		DEF APP W/ ATTNY DUVALL. MS.	CRT	
		CLAPP APP FROM PA OFFICE.	CRT	
		DEF TO PLEAD GUILTY TO OWI 3RD	CRT	
		AS HABITUAL IN THIS CASE AS	CRT	
		WELL AS IN CASE 14-8297-FH AND	CRT	
		PA WILL DISMISS REMAINDER OF	CRT	
		CNTS IN BOTH FILES. DEF SWORN	CRT	
		AND ADVISED OF RIGHTS. ELEMENT	CRT	
		-S SATISFIED. CT ACCEPTS PLEA.	CRT	
		SENTENCING TO BE SET. DEF REF	CRT	
		TO PROB.	CRT	
15		00099 REARRAIGNMENT	CRT AKJ	
		DISMISSED	CRT	
16	10/15/15	NOTICE SENT FOR: 11/25/15 1:30 PM	CLK TLP	
		SENTENCING		
17		PROOF OF SERVICE FILED	CLK LMK	
		RE:SENTENCING 11/25/15 @ 1:30P	CLK	
18	10/16/15	00001 ADJUDICATION ABSTRACT CREATED	CLK AKJ	
19	11/04/15	PP TERMINATED - Not this case	CLK SMM	
20	11/20/15	REMOVE NEXT EVENT: 11/25/15 1:30 PM	CLK TLP	
		SENTENCING		
		/HRG ADJOURNED - STIP & ORDER	CLK	
		TO ADJOURN SUBMITTED FOR	CLK	

21	JUDGE'S SIGNATURE.	CLK
	NOTICE SENT FOR: 12/09/15 1:30 PM	CLK TLP
	SENTENCING	
22	/RESCHEDULED FROM 11-25-15	CLK
	STIP AND ORDER ENTERED TO	CLK AKJ
	ADJ SENT	CLK
23	PROOF OF SERVICE FILED	CLK LMK
	RE:SENTENCING 12/9/15 @ 1:30PM	CLK
24 12/10/15	NOTICE SENT FOR: 01/13/16 1:30 PM	CLK TLP
	SENTENCING	
	/RESCHEDULED FROM 12-09-15	CLK
25	PROOF OF SERVICE FILED	CLK LMK
	RE:SENTENCING 1/13/16	CLK
	@ 1:30PM	CLK
26	STIPULATION AND ORDER ENTERED	CLK LMK
	TO ADJOURN CIRCUIT COURT	CLK
	SENTENCING	CLK
27 01/13/16	SENTENCING	CRT AKJ
	S LINTEMUTH, #8853	CRT
	DEF APP W/ ATTN Y DUVALL. DEF	CRT
	TO PAY \$60 OUIL REIMB. ATTN Y	CRT
	FEES WHEN DETERMINED. THIS	CRT
	SENTENCE TO RUN CONSECUTIVELY	CRT
	TO CASE 14-8297-FH. 20% LATE	CRT
	FEE TO BE ADDED AFTER 56 DAYS.	CRT
	APP RIGHTS GIVEN.	CRT
SENTENCE PRISON: MINIMUM MAXIMUM CREDIT		
	YYY- 24-DDD YYY- 60-DDD YYY-MMM- 3	
BEGIN 01/13/16		
	\$130.00 CRIME VICTIM RIGHTS	68.00 STATE MINIMUM COST
	\$500.00 LIBRARY FUND/FINES	250.00 CUNNINGHAM CIR CRT COSTS
	\$60.00 RESTITUTION	
28	AMENDED INFORMATION FELONY	CLK AKJ
	FILED	CLK
29	FINAL ORDER OR JUDGEMENT FILED	CLK AKJ
30	ORDER TO REMIT PRISONER FUNDS	CLK AKJ
32	ORDER FOR VEHICLE IMMOBILIZAT-	CLK AKJ
	ION FILED-SCHEDULED TO BEGIN	CLK
	11-13-17, DEF SENTENCED TO	CLK
	24 MON PRISON 1-13-16, LESS 60	CLK
	DAYS CREDIT, ESTIMATED START	CLK
	DATE 22 MONTHS OUT AT 11-13-17	CLK
33	B 001 BOND CANCELED (01)	CLK AKJ
31 01/15/16	00001 STATISTICAL ABSTRACT CREATED	CLK AKJ
34	BOND CONDITIONS CANCELLED FROM	CLK AKJ
	LEIN	CLK
35 01/19/16	SENTENCING INFORMATION REPORT	CLK LMK
	FILED	CLK
36	NOTICE OF RIGHT TO APPELLATE	CLK AKJ
	REVIEW AND REQUEST FOR CAA	CLK
	AFFIDAVIT OF INDIGENCY FILED	CLK
37 02/04/16	MONEY ORDERED	CRT AKJ
	STATEMENT OF ATTN Y FEES FILED	CRT
	\$590.25 ATTORNEY FEES	
38 02/10/16	ORDER ENTERED RAGARDING	CLK LMK
	APPOINTMENT OF APPELLATE	CLK
	COUNSEL AND TRANSCRIPT	CLK

39	02/12/16	CERTIFICATE OF MAILING REPORTER/RECORDING CERTIFICATE OF ORDERING TRANSCRIPT ON APPEAL FILED S. LINTEMUTH CER #8853	CLK CLK LMK CLK CLK CLK CLK
40	02/19/16	TRANSCRIPT RECEIVED-FELONY SENTENCING HEARING-HELD 1/13/16 BY JUDGE PETER M. JAKLEVIC	CLK LMK CLK CLK CLK
41		NOTICE OF FILING TRANSCRIPT AND AFFIDAVIT OF MAILING FILED S. LINTEMUTH CER #8853	CLK LMK CLK CLK CLK
42		TRANSCRIPT RECEIVED-FELONY SENTENCING HEARING-HELD 1/13/16 BY JUDGE PETER M. JAKLEVIC	CLK LMK CLK CLK CLK
43	03/28/16	COURT ORDERED PAID RECEIPT# 00165894 AMT \$60.00	CLK MMP
44	05/25/16	ANSWER TO MOTION TO WITHDRAW GUILTY PLEAS	CLK LMK CLK
45		MEMORANDUM IN SUPPORT OF ANSWERS TO MOTION TO WITHDRAW GUILTY PLEAS	CLK LMK CLK CLK
46	05/27/16	MONEY ORDERED AUTOMATIC LATE FEE ASSESSMENT	CRT *** CRT
	\$295.65	20 PERCENT LATE FEE	
47	06/06/16	MOTION TO WITHDRAW GUILTY PLEAS FILED	CLK LMK CLK
48	06/14/16	Letter Sent - 101 - \$3,854.46	CLK JS
49	07/01/16	OPINION AND ORDER ENTERED	CLK LMK
50		PROOF OF SERVICE FILED RE:OPINION AND ORDER	CLK LMK CLK
51	07/12/16	Stop Send Overdue Pymt Notice	CLK JS
52	07/15/16	OPINION AND ORDER RETURNED BY POST OFFICE-REMAILED OPINION AND ORDER SENT OUT 7/1/16 BY STEPHAINIE FROM DISTRICT CT.	CLK LMK CLK CLK CLK CLK CLK
53	11/03/16	COURT OF APPEALS, STATE OF MICHIGAN ORDER ENTERED - APPLICATION FOR LEAVE TO APPEAL IS DENIED	CLK LMK CLK CLK CLK
54	11/28/16	MAACS STATEMENT OF SERVICE AND ORDER FOR PAYMENT OF COURT APPOINTED COUNSEL FILED	CLK LMK CLK CLK
55	01/03/17	REQUEST FROM SUPREME COURT FOR ENTIRE FILED	CLK SLK CLK
56	08/11/17	COURT OF APPEALS, STATE OF MI ORDER ENTERED - CAUSE REMANDED TO CIRCUIT COURT TO DETERMINE DEF INDIGENCY	CLK LMK CLK CLK CLK
57	08/23/17	ORDER ENTERED REGARDING APPOINTMENT OF APPELLATE COUNSEL AND TRANSCRIPT CERTIFICATE OF SERVICE	CLK KLH CLK CLK CLK

58	08/28/17	REPORTER/RECORDER CERTIFICATE OF ORDERING TRANSCRIPT ON APPEAL FILED	CLK KLF CLK CLK
59	10/05/17	S.LINTEMUTH CER#8853 LETTER RECEIVED FROM DEF RE HER APPELLATE ATTNV AND CASE	CLK LMF CLK CLK
60	10/17/17	PEOPLE'S ANSWER TO DEFENDANT'S APPEAL FILED	CLK LMF CLK
61	05/18/18	DEF CALLED STATED SHE WAS RECENTLY INCARCERATED. WILL BE ABLE TO RESUME PAYMENT PLAN ON JUNE 1, 2018.	CLK LMF CLK CLK
62	10/09/18	MAACS STATEMENT OF SERVICE AND ORDER ENTERED FOR PAYMENT OF COURT APPOINTED COUNSEL	CLK LMF CLK CLK
63	03/25/19	COURT ORDERED PAID RECEIPT# 00199021 AMT \$101.72	CLK KLF
.....		END OF SUMMARY

I hereby certify this to be
 a true and correct copy of
 the record on file with the
 MECOSTA COUNTY CLERK.
 This certified copy is only
 valid when the Seal and
 Signature are affixed

Marcia J. Rasmussen
 MECOSTA COUNTY CLERK
 4-4-19 SM