

STATEWIDE BALLOT PROPOSALS - III

PROPOSAL B: CRIMINAL APPEALS AS A MATTER OF RIGHT

Proposal B on the November 8th statewide ballot is a proposed amendment to the Michigan Constitution submitted to the people by the Legislature, which if approved, will limit in certain respects appeal rights of criminal defendants.

THE ISSUE IN BRIEF

Section 20 of Article 1 of the Michigan Constitution accords certain rights to persons accused in criminal prosecutions, one of which is the right of appeal. The Michigan Supreme Court has held that this right of appeal is not waived by a criminal defendant who voluntarily enters a plea of guilty. **People v Smith**, (402 Mich 72; 1977). As a result, a criminal defendant whose guilt is not in doubt is entitled as a matter of state constitutional right to appeal the disposition of his or her case to the Michigan Court of Appeals and that court is required to render a written decision.

If approved, Proposal B would permit the Michigan Court of Appeals to exercise discretion in deciding whether to accept appeals filed by defendants who plead guilty or nolo contendere (no contest) in criminal proceedings. Adoption of Proposal B would not change the obligation of the Michigan Court of Appeals to accept appeals from criminal proceedings which result in conviction at trial.

The Case For Proposal B

There are two principal arguments that commend approval of Proposal B: the one having to do with practicality, the other with philosophy. The first argument regards the extent to which guilty pleas affect the Court of Appeals workload. In recent years, the court has received roughly 13,000 criminal and civil appeals annually. Of this total, approximately 4,400 appeals or 34 percent were filed by defendants who pled guilty or no contest but subsequently became dissatisfied with the disposition of their case. Often, the basis of the appeal has been the length of the sentence imposed. Since the number of appeals filed with the court has exceeded the number of case dispositions in any given years a backlog has accumulated in the number of cases pending. As a result, it now takes the court roughly two and a half years on average to decide cases. Thus, the essence of the first argument is that by allowing the Court of Appeals the discretion not to hear appeals of guilty or no contest pleas, the court could decrease its backlog and more efficiently manage its docket.

The second argument proceeds along the following lines: that the purpose of a criminal prosecution is to afford the people an opportunity to prove the guilt of an accused. Where prosecution ends in conviction at trial, the purpose of a right of appeal is to allow an impartial review of the determination of guilt. However, when an individual who is, accused of a crime admits guilt in a manner which the trial court determines is understanding, voluntary, and accurate, it may be ar-

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gued that the accused has agreed to the equivalent of a consent Judgment in a civil case. As such, there is no proper justification for appeal because guilt is no longer in doubt.

The Case Against Proposal B

There also are two principal arguments concerning why Proposal B should not be approved. Again, the first argument has to do with the Court of Appeals workload and the extent to which Proposal B might alleviate it. It is noteworthy that even if Proposal B were approved, the fact that the court no longer would be required to hear appeals from guilty or no contest pleas would not prohibit a defendant from filing such an appeal. What would change would be the ability of the court summarily to dismiss such appeals without having to issue a full-fledged written opinion explaining why the appeal was without merit. (As such, the judicial workload likely would decrease somewhat due to the need for fewer written opinions, even if the number of appeals remained constant.) However, since it is implausible that the court would attempt summarily to dismiss all appeals from guilty and no contest pleas if Proposal B were adopted, the court still would have to review all such appeals that were received in order to determine which should be heard and which rejected.

The second argument against Proposal B regards those appeals from guilty or no contest pleas where the basis of appeal is that the length of the sentence imposed exceeds what the defendant expected. (For example, in order to avoid the potential risk of a trial upon the crime charged, a defendant may plead guilty to a lesser crime in expectation of receiving a reduced sentence. However, because the courts are not bound by plea-bargaining agreements arrived at by defendants and prosecutors, a trial judge may impose a more severe sentence than the one recommended.) A prosecutor may file an appeal when the length of the sentence imposed is considered to be too lenient. Therefore, it might be argued that criminal defendants should not be denied a corollary right to appeal when they believe the sentence imposed is too severe.