

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ADRIAN QUINN COOPER,

Defendant-Appellant.

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UNPUBLISHED  
December 16, 1997

No. 197768  
Saginaw Circuit Court  
LC No. 96-011690 FH

Before: O'Connell, P.J., and White and C. F. Youngblood\*, JJ.

PER CURIAM.

Defendant appeals by right his conviction by jury of felonious assault, MCL 750.82; MSA 28.277, for which he received an enhanced six- to fifteen-year sentence as a fourth offender. MCL 769.12; MSA 28.1084, though the judgment of sentence "mistakenly" reflects that he was adjudicated a second offender. MCL 769.10; MSA 28.1082. This case is being decided without oral argument pursuant to MCR 7.214(E).

The original information in this case was filed on January 24, 1996, and defendant was arraigned thereon on January 29, 1996. Pursuant to MCL 769.13(1); MSA 28.1085(1), the prosecutor had twenty-one days from January 29, 1996, or until February 19, 1996, to notify defendant of the intent to seek an enhanced sentence under the recidivist statutes. In this connection, the original information notified defendant of the intent to seek enhancement of defendant's sentence as a second offender.

On the second day of trial, March 20, 1996, the prosecutor informed the court that, having rechecked the available information, no claim being made that for any justified reason the information was not previously available, the prosecutor now wished to charge defendant as a fourth offender. Over defense objection, the alteration of the notice of intent was permitted. This was error.

The instant case is controlled by *People v Ellis*, \_\_\_ Mich App \_\_\_; \_\_\_ NW2d \_\_\_ (Docket No. 187968, issued 7/29/97). *Ellis* held that such amendments are contrary to the statute.

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

Defendant's conviction of felonious assault, which is otherwise unchallenged, is affirmed; defendant's sentence is vacated and the case is remanded to the Saginaw Circuit Court for resentencing of defendant as a second offender, pursuant to the original notice of intent to seek enhancement of sentence. We do not retain jurisdiction.

/s/ Peter D. O'Connell

/s/ Helene N. White

/s/ Carole F. Youngblood