

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

THURSTON E. REDDEN,

Defendant-Appellant.

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UNPUBLISHED

July 24, 1998

No. 199265

Recorder's Court

LC No. 96-001348

Before: White, P.J., and Hood and Gage, JJ.

Per Curiam

Defendant was convicted, following a bench trial of first-degree home invasion, MCL 750.110a; MSA 28.305(a). He was sentenced to five to twenty years' imprisonment for the first-degree home invasion conviction, which sentence was vacated, and defendant was then sentenced to five to thirty years' imprisonment for being an habitual offender, fourth offense, MCL 769.13; MSA 28.1085. Defendant appeals as of right. We affirm defendant's conviction for home invasion, and remand for a hearing on the effectiveness of counsel in connection with the habitual offender charge.

Defendant claims that the prosecutor failed to present sufficient evidence to support his first-degree home invasion conviction. We disagree.

Viewed in the light most favorable to the prosecution, the evidence of shattered glass on a back door, defendant's apprehension after running from the porch of the home, his possession of a screwdriver and knife, and the fact that missing jewelry was found in the patrol car after he was transported were sufficient to justify a rational trier of fact in concluding that all the elements of the crime were proved beyond a reasonable doubt. *People v McFall*, 224 Mich App 403; 411-412; 569 NW2d 828 (1997).

Defendant next claims that his sentence for being an habitual offender is invalid because the prosecution did not file a notice of intent to seek an enhanced sentence until 22 days after his arraignment. MCL 769.13(1); MSA 28.1058(1). However, defendant's guilty plea to the habitual offender charge waives his challenge to the prosecutor's failure to timely file the supplemental charge. *People v Lannom*, 441 Mich 490; 494-495, 490 NW2d 396 (1992).

Finally, defendant claims that his trial counsel was ineffective for failure to move for dismissal of the untimely filed habitual offender charge, and points out that the enhanced sentence not only made the sentencing guidelines inapplicable, but caused him to be ineligible for parole for a longer minimum period. A criminal defendant is entitled to effective assistance of counsel at sentencing, *People v Harris*, 185 Mich App 100, 105; 460 NW2d 239 (1990). Defendant correctly argues that but for his counsel's failure to move for dismissal of the habitual notice, his sentence would not have been enhanced. The prosecutor, on the other hand, argues that the matter possibly involved trial strategy in an effort not to anger the trial judge and draw a longer sentence. We conclude that the proper approach is to remand this matter for a hearing on defendant's claim of ineffective assistance of counsel. *People v Ginther*, 390 Mich 436; 212 NW2d 922 (1971). If the trial court determines that counsel was ineffective, the habitual sentence should be vacated and the sentence on the underlying charge reinstated. If a determination is made that counsel was effective, the habitual sentence is affirmed.

Defendant's conviction is affirmed, and the matter is remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Helene N. White

/s/ Harold Hood

/s/ Hilda R. Gage