

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

VAN JENKINS,

Defendant-Appellant.

UNPUBLISHED

July 30, 1999

No. 202100

Jackson Circuit Court

LC No. 95-071877 FH

Before: White, P.J., and Markey and Wilder, JJ.

MEMORANDUM.

Defendant appeals by right his conviction of habitual offender, fourth offense, MCL 769.12; MSA 28.1084, entered after a jury trial. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

In *People v Jenkins*, unpublished opinion per curiam of the Court of Appeals, issued October 11, 1996 (No. 187857), we affirmed defendant's conviction of inmate in possession of a weapon, MCL 800.283(4); MSA 28.1623(4), but vacated his habitual offender conviction on the ground that he was entitled to a jury trial on the charge.

Before defendant's jury trial on the supplemental charge, defense counsel requested that defendant's handcuffs be removed. The trial court directed that defendant's handcuffs be removed but that his leg shackles remain in place. Defense counsel did not object. The jury found defendant guilty as charged. Subsequently, the trial court sentenced defendant to three to fifteen years in prison.

Defendant argues that he was denied a fair trial because he was forced to appear before the jury in shackles. We disagree. Freedom from shackles is a significant component of the right to a fair trial. *People v Williams*, 173 Mich App 312, 314; 433 NW2d 356 (1988). A defendant should be restrained only to prevent escape, to prevent injury to others, or to maintain order in the courtroom. *People v Dunn*, 446 Mich 409, 426 & n 26; 521 NW2d 255 (1994). We review a decision to restrain a defendant for an abuse of discretion under the totality of the circumstances. *People v Dixon*, 217 Mich App 400, 404-405; 552 NW2d 663 (1996). To justify reversal of a conviction on the basis

of being shackled, a defendant must demonstrate that he was prejudiced by the action. *People v Robinson*, 172 Mich App 650, 654; 432 NW2d 390 (1988).

Here, defendant has failed to show that he was actually prejudiced. Defense counsel did not object to the trial court's decision to leave the leg shackles in place. The failure to object militates against a finding of prejudice. *Robinson, supra*. Any error resulting from the trial court's failure to find that shackles were necessary for an acceptable reason, *Dunn, supra*, is rendered harmless by the lack of evidence that the jury observed the shackles. *People v Johnson*, 160 Mich App 490, 493; 408 NW2d 485 (1987). Under the totality of the circumstances, no abuse of discretion occurred.

We affirm.

/s/ Helene N. White

/s/ Jane E. Markey

/s/ Kurtis T. Wilder