

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

CURTIS DEREKO MANIER,

Defendant-Appellant.

UNPUBLISHED

June 22, 2004

No. 246025

Wayne Circuit Court

LC No. 02-001025

Before: Neff, P.J., and Zahra and Murray, JJ.

MEMORANDUM.

Defendant appeals as of right his jury conviction for manslaughter, MCL 750.321, and receiving and concealing stolen property, MCL 750.535(2)(a). Defendant was sentenced as a fourth habitual offender to 18 to 35 years' imprisonment for manslaughter, and two to ten years' imprisonment for receiving and concealing. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

On appeal, defendant argues that he is entitled to resentencing because he did not receive notice of the habitual offender enhancement. MCL 769.13 provides in part:

(1) In a criminal action, the prosecuting attorney may seek to enhance the sentence of the defendant as provided under section 10, 11, or 12 of this chapter, by filing a written notice of his or her intent to do so within 21 days after the defendant's arraignment on the information charging the underlying offense or, if arraignment is waived, within 21 days after the filing of the information charging the underlying offense.

(2) A notice of intent to seek an enhanced sentence filed under subsection (1) shall list the prior conviction or convictions that will or may be relied upon for purposes of sentence enhancement. The notice shall be filed with the court and served upon the defendant or his or her attorney within the time provided in subsection (1). The notice may be personally served upon the defendant or his or her attorney at the arraignment on the information charging the underlying offense, or may be served in the manner provided by law or court rule for service of written pleadings. The prosecuting attorney shall file a written proof of service with the clerk of the court.

Defendant does not dispute that notice was filed with the court. In *People v Walker*, 234 Mich App 299, 314; 593 NW2d 673 (1999), this Court held that the prosecutor's failure to file a proof of service does not violate a defendant's right to due process of law. The only potential due process violation would arise from a lack of notice of the charge.

The statute provides that the notice may be given to the defendant or his or her attorney. Even if defendant somehow did not receive the information or other documents noting the habitual offender enhancement, his attorney certainly did. Defendant has failed to show that he was denied due process of law.

Affirmed.

/s/ Janet T. Neff
/s/ Brian K. Zahra
/s/ Christopher M. Murray