

STATE OF MICHIGAN  
COURT OF APPEALS

---

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

FRANK L. WALTON,

Defendant-Appellant.

---

UNPUBLISHED

October 19, 2004

No. 248160

Wayne Circuit Court

LC No. 98-010861-01

Before: Griffin, P.J., and Saad and O'Connell, JJ.

PER CURIAM.

Defendant appeals as of right his sentences of fifteen to thirty years for armed robbery<sup>1</sup> and four to ten years for assault with intent to commit great bodily harm less than murder,<sup>2</sup> imposed on remand, and we affirm.<sup>3</sup>

A jury convicted defendant of armed robbery and assault with intent to commit great bodily harm less than murder, and the trial court sentenced defendant as a fourth habitual offender<sup>4</sup> to thirty to fifty years in prison.<sup>5</sup> In *People v Walton*, unpublished opinion per curiam of the Court of Appeals, issued August 10, 2001 (Docket No. 219702), another panel of this Court affirmed defendant's convictions but remanded for resentencing, concluding that the trial court erred when it sua sponte amended the judgment of sentence to reflect that defendant's sentences were to be consecutive to the sentence he was serving on parole at the time he committed the instant offenses. On remand, the trial court sentenced defendant to concurrent terms of fifteen to thirty years and four to ten years for armed robbery and assault with intent to do great bodily harm, consecutive to the sentence he was serving on parole at the time he committed the instant offenses.

---

<sup>1</sup> MCL 750.529.

<sup>2</sup> MCL 750.84.

<sup>3</sup> This appeal is being decided without oral argument pursuant to MCR 7.214(E).

<sup>4</sup> MCL 769.12.

<sup>5</sup> The offenses of which defendant was convicted occurred prior to January 1, 1999. Thus, the statutory sentencing guidelines did not apply in this case. MCL 769.34(1).

Defendant moved for resentencing and to vacate the trial court's finding that he was a fourth habitual offender, and argued that he did not receive actual notice of the prosecution's intent to seek sentence enhancement, as required. The trial court declined to hold an evidentiary hearing, and found that defendant had not made a prima facie case that he did not receive proper notice of the prosecution's intent to seek sentence enhancement. Defense counsel questioned the fact that the judgment of sentence stated that the sentences for the current offenses commenced on the date resentencing occurred. The trial court concluded that the judgment of sentence was correct.

A notice of intent to seek an enhanced sentence must be served on the defendant or defense counsel personally at the arraignment or in the manner provided by law or court rule for service of written pleadings. The prosecution must file a written proof of service. MCL 769.13(2). The interpretation of a statute presents a question of law that we review de novo on appeal. *People v Marsack*, 231 Mich App 364, 379; 586 NW2d 234 (1998).

Defendant argues that he is entitled to resentencing because no evidence showed that he received actual notice of the prosecution's intent to seek sentence enhancement. Defendant does not dispute that the information contained notice of the prosecution's intent to seek sentence enhancement pursuant to MCL 769.12. At the arraignment on the information, defense counsel indicated that defendant would waive the formal reading of the information and stand mute. It is logical to assume that defense counsel possessed a copy of the information at that point. In support of his motion for resentencing defendant filed an affidavit stating that he did not receive a copy of the information; however, his implied assertion that counsel did not receive a copy is unsubstantiated. Therefore, we hold that the trial court did not err when it denied defendant's motion. Were we to hold otherwise, we would nevertheless hold that any error was harmless. *People v Walker*, 234 Mich App 299, 314; 593 NW2d 673 (1999).

Furthermore, defendant argues that the trial court erred when it denied his motion to amend the judgment of sentence to eliminate a date of commencement for the sentences imposed on remand. If a defendant commits a crime while on parole, the sentence imposed for that crime must be consecutive to the sentence the defendant was serving on parole. MCL 768.7a(2). In its decision on defendant's original appeal, this Court affirmed defendant's convictions but remanded for resentencing. A sentence cannot commence until it is imposed. *People v Ovalle*, 222 Mich App 463, 468; 564 NW2d 147 (1997). Defendant's sentences on remand commenced the date they were imposed. The judgment of sentence indicated that defendant was entitled to all credit for time served for which he was eligible, as required. *People v Lyons (After Remand)*, 222 Mich App 319, 324; 564 NW2d 114 (1997). No error occurred.

Affirmed.

/s/ Richard Allen Griffin  
/s/ Henry William Saad  
/s/ Peter D. O'Connell