STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee, v JOE LUIS BOATMAN, Defendant-Appellant.	FOR PUBLICATION December 28, 2006 9:00 a.m. No. 270564 Saginaw Circuit Court LC No. 99-017170-FH Official Reported Version

Before: Servitto, P.J., and Fitzgerald and Talbot, JJ.

SERVITTO, P.J. (*concurring).*

I concur in the result only. I write separately because I believe MCR 6.302(B)(2) requires that a trial court advise a defendant of the maximum sentence he may be subject to as a result of his status as an habitual offender.

MCR 6.302(B)(2) provides that the court must advise the defendant of "the maximum possible prison sentence for the offense and any mandatory minimum sentence required by law" before accepting a plea of guilty. This rule has generally been found not to encompass advice beyond that specifically stated in the court rule. *People v Johnson,* 413 Mich 487, 490; 320 NW2d 876 (1982). While a guilty plea must be made "with knowledge of the consequences," *People v Schluter,* 204 Mich App 60, 66; 514 NW2d 489 (1994), "the trial judge need not inform the defendant of all sentence consequences—only the maximum sentence for the crime to which he was pleading guilty," *People v Jahner,* 433 Mich 490, 502; 446 NW2d 490 (1989), and "any mandatory minimum sentence required by law." MCR 6.302(B)(2).

Nevertheless, because a defendant's status as an habitual offender directly affects the possible maximum sentence he or she may receive for the underlying offense, I believe that advising a defendant of the maximum sentence he or she will specifically be facing when habitual status is taken into account falls within the ambit of MCR 6.302(B)(2). To hold otherwise would undermine the goal of ensuring that guilty pleas are made voluntarily.

It has been clear for some time that the habitual-offender statute does not create a substantive offense that is separate from and independent of the principal charge. *People v Oswald (After Remand),* 188 Mich App 1, 12; 469 NW2d 306 (1991). There is also, as a result, no separate and distinct sentence imposed on a habitual offender. Rather, the habitual-offender statute provides possible enhancements directly placed on the sentence imposed for the underlying offense. Where a defendant's habitual-offender status leads to no separate sentence,

such status could only be viewed as part and parcel of the charged crime. By failing to advise a defendant of the potential maximum sentence that may be imposed by virtue of his or her status as an habitual offender, a trial court is not advising of the "true" potential maximum sentence.

As pointed out by the majority, when the sentence for the underlying offense is directly affected, the higher potential maximum sentence is not simply a collateral matter. This is particularly so when, as here, the difference between the maximum sentence for a first-time offender and defendant, as a fourth-offense habitual offender, is 13 years. Had defendant known at the time of the plea that the maximum sentence was that long, he might not have pleaded guilty. I would therefore hold that the purpose of MCR 6.302(B)(2) can be fairly served and result in no inequity only if an habitual offender is advised of the potential maximum sentence he or she faces for the offense *as an habitual offender*.

/s/ Deborah A. Servitto