

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

UNPUBLISHED

Plaintiff-Appellee,

v

No. 180521

LC No. 93-126033-FC

GARY D. OAKLEY,

Defendant-Appellant.

Before: Smolenski, P.J., and Holbrook, Jr. and F.D. Brouillette,* JJ.

BROUILLETTE, J. (dissenting).

I agree with the reasoning of the majority except as to the remedy provided. I agree, for all the reasons cited by the majority, that this case should be remanded to the trial court for an evidentiary hearing so that the trial court can determine when defendant or his attorney received actual notice of the habitual offender information and whether or not that notice was sufficient to enable the defendant to knowingly plead to the underlying charges. I also agree that if the trial court finds the notice was timely the defendant's convictions and sentences should be affirmed.

If, however, the trial court finds that the defendant did not receive adequate notice of the habitual offender charge the prosecution should be given the opportunity to dismiss the habitual offender charge and allow the sentences originally imposed for the underlying convictions to stand. To the extent the majority opinion stands for a contrary result I dissent.

The court properly sentenced the defendant on the underlying charges before any plea was made or any sentence imposed on the habitual offender information. To allow the defendant to withdraw his guilty pleas to the underlying charges after the passage of this much time without affording the prosecution the opportunity to dismiss the habitual offender information instead might unfairly burden the prosecution.

* Circuit judge, sitting on the Court of Appeals by assignment.

Filing and dismissing criminal charges is uniquely within the statutory authority of the prosecution and in this case and under these circumstances the prosecution should be given that opportunity.

/s/ Francis D. Brouillette