

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JERRY CLAY,

Defendant-Appellant.

UNPUBLISHED

January 21, 1997

No. 183102

LC No. 94-000945-FH

Before: Neff, P.J., and Smolenski and D. A. Roberson,* JJ.

PER CURIAM.

Defendant appeals as of right from his conviction for assault of a corrections officer in violation of MCL 750.197c; MSA 28.394(3). Defendant was sentenced as a fourth felony offender, MCL 769.12; MSA 29.1084, to three to fifteen years' imprisonment. We affirm.

I

Defendant first contends that the circuit court failed to ensure that defendant effectively waived his right to counsel. Defendant admits the validity of his initial waiver, which was made at a pretrial hearing. However, defendant insists that the court failed to properly reconfirm defendant's initial waiver of his right to counsel at his trial for assault and at his trial on the habitual offender charge, which took place five months later. Pursuant to MCR 6.005(E), the record must "affirmatively show" before each subsequent proceeding that the court advised defendant of his continuing right to counsel and that defendant waived that right.

The court asked defendant on the first day of trial whether he wanted an attorney and defendant stated that he did not. Despite defendant's assertion that the court should have asked defendant on each and every subsequent day of trial, MCR 6.005(E) requires a reconfirmation of the waiver prior to a subsequent "proceeding," such as a trial, but does not require reconfirmation on each day of the proceeding.

* Recorder's Court judge, sitting on the Court of Appeals by assignment.

Defendant also argues that the court failed to reconfirm the waiver at his habitual offender trial. Our Supreme Court requires substantial compliance with MCR 6.005(E). *People v Adkins*, 452 Mich 702, 735-736; 551 NW2d 108 (1996). Although MCR 6.005(E) requires that the reconfirmation occur at the beginning of each proceeding, the record shows that the court noted defendant's continued waiver of counsel at the end of his habitual offender trial. Moreover, defendant had waived the right two times previously in this case and also subsequently waived the right at his sentencing hearing. We conclude the court substantially complied with the requirements of the court rule. *Id.*

II

Defendant next contends that the prosecutor engaged in misconduct by arguing in closing that defendant's statements during his questioning of witnesses at trial was evidence that defendant was guilty. Because defendant failed to object to the comments, we will reverse only if a curative instruction could not have eliminated the prejudicial effect or where failure to review the issue would result in a miscarriage of justice. *People v Ullah*, 216 Mich App 669, 679; 550 NW2d 568 (1996). Even though the prosecutor's remarks were improper, any error was cured by the court's instruction to the jury that it was not to consider the attorney's statements as evidence. Furthermore, we find the evidence against defendant was overwhelming. We thus conclude that no miscarriage of justice resulted from the prosecutor's closing remarks.

III

Finally, defendant challenges his sentence as an habitual offender (fourth) and argues that the evidence was insufficient to show that he had a previous conviction for obstruction of justice. We disagree. The prosecution presented evidence that defendant pleaded no contest to obstruction of justice and was sentenced for that offense. See *People v Preuss*, 436 Mich 714, 733; 461 NW2d 703 (1990) (sentence is a declaration of the consequences of conviction). When viewed in a light most favorable to the prosecution, the evidence was sufficient to establish beyond a reasonable doubt both the prior obstruction of justice conviction and the identity of defendant as the person who committed the offense. *People v Hatfield (On Remand)*, 182 Mich App 384, 387; 451 NW2d 634 (1990).

Affirmed.

/s/ Janet T. Neff
/s/ Michael R. Smolenski
/s/ Dalton A. Roberson