STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

LUTHER LAWRENCE THOMPSON,

Defendant-Appellant.

UNPUBLISHED
January 31, 1997

No. 187783
Ingham Circuit Court
LC No. 95-068723-FH

Before: Griffin, P.J., and McDonald and C. W. Johnson*, JJ.

PER CURIAM.

Defendant pleaded guilty to criminal sexual conduct in the second degree, MCL 750.520c(1)(a); MSA 28.788(3)(1)(a). Defendant was sentenced to ten to fifteen years' imprisonment. Defendant appeals his conviction as of right. We affirm.

On appeal, defendant first claims that his plea bargain was illusory. Defendant argues the prosecutor was precluded by double jeopardy from supplementing the information with the sentencing enhancement provision for repeat sexual offenders (MCL 750.520f; MSA 28.788(6)), and, therefore, offered no consideration in exchange for defendant's decision to plead guilty. We disagree. It is well established that a supplemental information charging the defendant as a repeat offender does not create a separate substantive crime out of a collection of offenses. *People v Shotwell,* 352 Mich 45, 46; 88 NW2d 313 (1958); *People v Stevens,* 130 Mich App 1, 7; 343 NW2d 219 (1983). Instead, such statutes are designed to augment the sentence for repeat or habitual offenders. *People v Doyle,* 451 Mich 93, 102; 545 NW2d 627 (1996); *People v Baskin,* 145 Mich App 526, 540-541; 378 NW2d 535 (1985). Because the supplemental information does not allege a substantive offense, defendant was not subjected to or threatened with multiple punishments for the same offense. See *People v James,* 191 Mich App 480, 482, n 1; 479 NW2d 16 (1991); *Baskin, supra* at 539-541; *Stevens, supra* at 7-8; see generally *People v Robideau,* 419 Mich 458, 485; 355 NW2d 592 (1984); *People v Hermiz,* 207 Mich App 449, 451; 526 NW2d 1 (1994). Accordingly, the prosecutor could have

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

constitutionally proceeded against defendant on the supplemental information and defendant's plea bargain was not illusory. *Stevens, supra* at 7-8.

Next, defendant argues that his counsel was ineffective by failing to obtain a *Cobbs*[1] plea. However, there was no evidentiary hearing on this issue below. Therefore, appellate review is limited to the record. *People v Barclay*, 208 Mich App 670, 672; 528 NW2d 842 (1995). After a thorough review of the record, we conclude that defendant has neither sustained his burden of proving that counsel made a serious error that affected the result of trial nor overcome the presumption that counsel's actions were strategic. *People v LaVearn*, 448 Mich 207, 213; 528 NW2d 721 (1995); *People v Stanaway*, 446 Mich 643, 666, 687-688; 521 NW2d 557 (1994). Indeed, the trial court can decline to utilize the rarely used procedure outlined in *Cobbs* and there are strategic reasons not to seek the procedure. Therefore, we hold that, standing alone, defense counsel's failure to seek a *Cobbs* plea does not constitute a serious mistake.

Affirmed.

/s/ Richard Allen Griffin
/s/ Gary R. McDonald
/s/ Charles W. Johnson

[1] See *People v Cobbs*, 443 Mich 276; 505 NW2d 208 (1993).