STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

WILLIE JAMES WITHERS,

Defendant-Appellant.

UNPUBLISHED
July 25, 1997

No. 185388
Ingham Circuit Court
LC Nos. 94-068153 FH &
95-068342 FH

Before: Jansen, P.J., and Wahls and P.R. Joslyn*, JJ.

MEMORANDUM.

On plea of guilty in a consolidated proceeding, defendant was convicted of uttering and publishing (L.C. No. 94-068153 FH) and felonious assault (L.C. No. 95-068342 FH). The pleas were the result of a bargain, whereby a supplemental information, charging defendant as a fourth offender, was dismissed as to the uttering and publishing charge and reduced to one of being a second offender in conjunction with the felonious assault charge. Defendant was sentenced to 2 to 14 years for uttering and publishing and an enhanced sentence of 2 to 6 years for felonious assault, to be served consecutively.

Defendant contends that he never pled guilty to being a habitual offender, and that his due process rights were violated by the manner in which the habitual offender charges were processed. The uttering and publishing offense was committed on July 27, 1994; the felonious assault on December 23, 1994. Both offense dates are after May 1, 1994, the effective date of 1994 PA 110, which revised the procedure for enhancing sentences for habitual offenders. A supplemental information is no longer required; the prosecutor need only notify the defendant of the intent to seek an enhanced sentence not later than 21 days after arraignment on the information charging the underlying offense, listing the prior convictions the prosecutor intends to rely upon as a basis for enhancement. Here, the prosecutor did so, albeit going further by filing a supplemental information under the old procedure, but defendant can hardly claim to be harmed by receiving more process than was due. Defendant did not challenge the existence or validity of any such convictions, and therefore the trial court could enhance his sentence without the necessity of any additional formal proceedings. *People v Zinn*, 217 Mich App 340; 551

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

NW2d 704 (1996). It was therefore unnecessary for the trial court to devote any portion of the plea taking proceedings to the habitual offender issues beyond fixing the bargaining parameters.

Defendant's remaining argument on appeal is that trial counsel was ineffective in failing to obtain a specific sentence bargain pursuant to *People v Cobbs*, 443 Mich 276; 505 NW2d 208 (1993). As a matter of fact, the plea taking transcript reveals that defendant expressly denied that any sentence bargain had been struck. The record fails to demonstrate that, had defendant's trial counsel attempted to do so, he would necessarily have succeeded in convincing the prosecutor and the trial judge to participate in any such agreement. To the contrary, it appears that counsel bargained effectively on defendant's behalf and obtained all concessions the prosecution was prepared to make. Defendant has failed to establish that counsel's performance fell below a minimum standard of reasonableness for criminal defense practitioners or that he was prejudiced thereby. However, to obtain appellate relief on a claim of ineffective assistance of counsel, he must establish both. *People v Pickens*, 446 Mich 298; 521 NW2d 797 (1994).

Affirmed.

/s/ Kathleen Jansen
/s/ Myron H. Wahls
/s/ Patrick R. Joslyn