

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

MICHAEL MULLINS,

Defendant-Appellant.

UNPUBLISHED

April 1, 1997

No. 186261

Oakland Circuit Court

LC No. 82-054846-FY

Before: D.F. Walsh,* P.J., and R.P. Griffin** and W.P. Cynar,* JJ.

MEMORANDUM.

Defendant pleaded guilty to breaking and entering with intent to commit larceny, MCL 750.110; MSA 28.305, and habitual offender, third offense, MCL 769.11; MSA 28.1083, for which he was sentenced to three to thirty years' imprisonment. He appeals by leave granted. We affirm defendant's conviction of breaking and entering but remand for resentencing and for an evidentiary hearing regarding defendant's habitual offender conviction. This case has been decided without oral argument pursuant to MCR 7.214(E)(1)(b).

The trial court's failure to prepare and consider a presentence investigation report prior to sentencing entitles defendant to resentencing. MCL 771.14; MSA 28.1144; *People v Baker*, 215 Mich App 606, 609; 547 NW2d 62 (1996).

Defendant's claim that he did not receive actual notice of the filing of the habitual offender information until the day of the plea proceeding requires that the case be remanded to the trial court for

*Former Court of Appeals judges, sitting on the Court of Appeals by assignment pursuant to Administrative Order 1996-10.

**Former Supreme Court justice, sitting on the Court of Appeals by assignment pursuant to Administrative Order 1996-10.

an evidentiary hearing. *People v Hays*, 164 Mich App 7; 416 NW2d 358 (1987). The trial court should determine when defendant or his counsel received actual notice, and whether the notice was sufficiently timely to enable defendant to knowingly plead.

Defendant's conviction on the charge of breaking an entering with intent to commit larceny is affirmed. The case is remanded to the trial court for resentencing as to the habitual offender conviction for proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Daniel F. Walsh

/s/ Robert P. Griffin

/s/ Walter P. Cynar