

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

WILLIE B. WILLIS,

Defendant-Appellant.

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UNPUBLISHED  
September 2, 1997

No. 191198  
Oakland Circuit Court  
LC No. 95-137219 FH

Before: O'Connell, P.J., and White and C. F. Youngblood\*, JJ.

MEMORANDUM.

Defendant appeals by right his conviction by jury of first-degree retail fraud, MCL 750.356; MSA 29.588 and enhanced sentence, as a fourth offender, of three to fifteen years' imprisonment. MCL 769.12; MSA 28.1084.

Defendant contends that he was not given timely notice of the prosecutor's intent to seek an enhanced sentence under the recidivist statutes. To the contrary, the lower court record contains the prosecutor's notice of intent to seek sentence enhancement, time-stamped as filed by the Oakland Circuit Court Clerk on February 9, 1995. The docket entries also reflect the filing of the notice on that date. As arraignment did not occur on the information until February 10, 1995, the filing of this notice was a fortiori within twenty-one days of defendant's arraignment on the information, MCL 769.13(1); MSA 28.1085(1).

Defendant's motion to dismiss, based on the inability of the prosecutor to adduce evidence in support of enhancement immediately after the jury's verdict on the retail fraud charge, was proper. Since one of the ways of establishing the defendant's record of prior convictions for sentence enhancement purposes is by information contained in a presentence report, MCL 769.13(5)(c); MSA 28.1085(5)(c), until the time scheduled for sentencing the prosecution need not be put to its proofs with respect to a habitual offender issue.

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

Here, the presentence report reflects at least twelve prior felony convictions, so the trial court had ample basis on which to find the habitual offender charge established. Furthermore, defendant did not file the prerequisite written notice challenging the accuracy or validity of any of these prior convictions, as required by MCL 769.13(4); MSA 28.1085(4). *People v Zinn*, 217 Mich App 340, 348-349; 551 NW2d 704 (1996).

Finally, defendant contends the trial court never formally adjudicated him a fourth offender. However, the fact that the trial court proceeded to impose an enhanced 3 to 15 year sentence sufficiently indicates that the trial court was duly and properly satisfied, on the basis of ample evidence, of defendant's fourth offender status. See *Guilty Plea Cases*, 395 Mich 96, 126; 235 NW2d 132 (1975).

Affirmed.

/s/ Peter D. O'Connell

/s/ Helene N. White

/s/ Carole F. Youngblood