

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

RAYMOND EUGENE HIEMSTRA,

Defendant-Appellant.

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UNPUBLISHED  
November 4, 1997

No. 196098  
Van Buren Circuit Court  
LC No. 95-009544 FH

Before: Holbrook, Jr., P.J., and Michael J. Kelly and Gribbs, JJ.

MEMORANDUM.

Defendant was convicted by jury of unarmed robbery, MCL 750.530; MSA 28.798, and sentenced to an enhanced term of imprisonment of ten to forty-five years, reflecting his status as a fourth offender, MCL 769.12; MSA 28.1084. Defendant appeals as of right. We affirm defendant's conviction, but vacate his sentence and remand for resentencing.

Having reviewed the record evidence in a light most favorable to the prosecutor and having resolved all conflicts in favor of the prosecutor, we find that a rational trier of fact could have found beyond a reasonable doubt that defendant took money from the victim by force and violence while intending to permanently deprive the victim of that money. *People v Wolfe*, 440 Mich 508, 515; 489 NW2d 748 (1992), amended 441 Mich 1201 (1992); *People v Terry*, 224 Mich App \_\_\_\_; \_\_\_\_ NW2d \_\_\_\_ (1997); *People v Denny*, 114 Mich App 320, 323-324; 319 NW2d 547 (1982).

Trial counsel did not render ineffective assistance of counsel when he made a strategic decision concerning which of two equally dubious defenses to pursue. *People v LaVearn*, 448 Mich 207, 214; 528 NW2d 721 (1995).

Counsel was ineffective, however, when he failed to challenge the validity of the notice of intent to seek sentence enhancement pursuant to the habitual offender statutory provisions. *People v Pickens*, 446 Mich 298, 303; 521 NW2d 797 (1994); *People v Messenger*, 221 Mich App 171, 181; 561 NW2d 463 (1997). Here, there is no question that the notice was untimely because it was filed more than twenty-one days after defendant's arraignment. MCL 769.13(1); MSA 28.1085(1); *People v Bollinger*, 224 Mich App \_\_\_\_; \_\_\_\_ NW2d \_\_\_\_ (1997). Because the notice was untimely,

the prosecutor lacked authority to seek sentence enhancement. *Id.* Defense counsel's failure to challenge the validity of the notice resulted in the imposition of an invalidly enhanced sentence. Accordingly, we vacate defendant's sentence and remand for resentencing.

Affirmed in part and remanded. We do not retain jurisdiction.

/s/ Donald E. Holbrook, Jr.

/s/ Michael J. Kelly

/s/ Roman S. Gibbs