

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

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ANTONY D. HARDWICK,

Defendant-Appellant.

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UNPUBLISHED

August 9, 2002

No. 231393

Wayne Circuit Court

LC No. 99-012454

Before: Hood, P.J., and Sawyer and Zahra, JJ.

MEMORANDUM.

Following a bench trial, defendant was convicted of larceny from a person, MCL 750.357. The trial court sentenced him to three to ten years' imprisonment and then vacated that sentence and sentenced defendant as a fourth felony offender, MCL 769.12, to five to ten years' imprisonment. Defendant appeals as of right. We affirm.

Defendant argues that his habitual offender sentence must be set aside for lack of appropriate notice. Whether the prosecutor satisfied the statutory requirements regarding enhanced sentencing for habitual offenders is a question of law that this Court reviews de novo. *People v Sierb*, 456 Mich 519, 522; 581 NW2d 219 (1998).

MCL 769.13(1) provides that a prosecutor may seek enhancement of a defendant's sentence as an habitual offender by filing a written notice of intent to do so within twenty-one days after the defendant's arraignment on the information or the filing of the information. Subsection (2) provides that the notice of intent to seek an enhanced sentence "shall be filed with the court and served upon the defendant or his or her attorney within the time provided in subsection (1)," and requires the prosecutor to file a written proof of service.

In this case, the prosecutor first indicated his intent to seek an enhanced sentence within the initial complaint and warrant by including an "Habitual Offender – Fourth Offense Notice" enumerating three of defendant's seven prior felony convictions beneath the original armed robbery charge. The district court register of actions shows that he was arraigned on "all counts" and the return to circuit court includes defendant's waiver of preliminary examination with a statement that "I understand that I will be bound over to Circuit Court on the charges in the complaint and warrant," followed by his signature and that of his attorney. The bind over, part of the same document, similarly shows that he was bound over on both charges. The information

filed in the circuit court also included a notice of intent to seek enhancement of defendant's sentence as a fourth felony offender.

Because the notice of intent was filed as part of the information, it was timely filed under MCL 769.13. Although defendant claims that he was never served with a copy of the information and notice, the lower court file establishes that defendant and his attorney had actual notice of the intent to seek enhancement as a fourth felony offender from the day the complaint and warrant were issued. Under these circumstances, we decline to vacate defendant's habitual offender sentence.

Defendant also suggests that his habitual offender sentence must be set aside because the prosecutor never filed a proof of service as required by MCL 769.13(2). Again, however, the record makes it apparent that defendant had actual notice that the prosecutor intended to seek sentence enhancement. The failure to file a proof of service was therefore harmless. *People v Walker*, 234 Mich App 299, 314; 593 NW2d 673 (1999).

Affirmed.

/s/ Harold Hood

/s/ David H. Sawyer

/s/ Brian K. Zahra