

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

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ANDRE WATTS,

Defendant-Appellant.

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UNPUBLISHED

June 12, 2003

No. 239039

Arenac Circuit Court

LC No. 00-002737-FH

Before: Sawyer, P.J., and Meter and Schuette, JJ.

MEMORANDUM.

Defendant appeals as of right from a nonjury conviction of assault on a prison employee, MCL 750.197c(1), for which he was sentenced as an habitual offender, third offense, MCL 769.11, to two to eight years in prison. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant's sole argument on appeal is that the evidence was insufficient to sustain the conviction because the prosecutor did not prove that the assault occurred during an attempt to escape from prison. We disagree. The statute under which defendant was convicted creates two types of offenses: assaulting a prison employee, and breaking prison and escaping or attempting to escape using violence, threats of violence, or a dangerous weapon. MCL 750.197c(1). The assault offense is a simple misdemeanor assault which is elevated to a felony by virtue of the victim's status as a prison employee. The defendant need not be attempting to escape at the time. *People v Boyd*, 102 Mich App 112, 115-116; 300 NW2d 760 (1980).

Affirmed.

/s/ David H. Sawyer

/s/ Patrick M. Meter

/s/ Bill Schuette