

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

KEITH A. SACKETT,

Defendant-Appellant.

UNPUBLISHED

August 23, 1996

No. 178799

LC No. 93-128612

Before: MacKenzie, P.J., and Saad and C. F. Youngblood,* JJ.

MEMORANDUM.

Defendant pleaded nolo contendere to one count of indecent exposure by a sexually delinquent person, MCL 750.335a; MSA 28.567(1), and one count of disorderly person - obscene conduct, MCL 750.167(1)(f); MSA 28.364(1)(f), MCL 750.168; MSA 28.365. Although he did not plead guilty to being an habitual offender, he was sentenced to two-and-a-half to ten-years imprisonment, as an habitual offender, and the other sentences were vacated. Defendant now appeals on various grounds, and we affirm the convictions for indecent exposure and obscene conduct, but vacate the habitual offender conviction and sentence, and remand for new trial or plea proceeding on that charge.

Defendant raises several challenges to the habitual offender conviction and sentence. We have carefully reviewed the record, and find no indication that defendant ever pleaded guilty to being an habitual offender, or that any other determination of guilt was made. Therefore, the trial court erred in sentencing defendant as an habitual offender, and the habitual offender conviction and sentence are vacated. The habitual offender charge is therefore remanded for a new trial or plea proceeding. We find no merit to defendant's naked assertion that the habitual offender statutes do not apply to convictions for indecent exposure.

We need not reach defendant's arguments alleging ineffective assistance of counsel and proportionality. We note for the record that, even though defendant was erroneously sentenced as an

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

habitual offender, in light of his extensive criminal record, we find no abuse of discretion in the two-and-a-half year sentence imposed.

Affirmed in part and reversed in part, and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Barbara B. MacKenzie

/s/ Henry William Saad

/s/ Carole F. Youngblood