

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

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

REGINALD D. TIGGLE,

Defendant-Appellant.

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UNPUBLISHED

January 26, 2001

No. 218594

Wayne Circuit Court

LC No. 98-013026

Before: Markey, P.J., and Whitbeck and J. L. Martlew\*, JJ.

MEMORANDUM.

Defendant appeals by right his conviction for assault with intent to commit great bodily harm, MCL 750.84; MSA 28.279, and his sentence as a second habitual offender, MCL 769.10; MSA 28.1082. We vacate his sentence and remand for resentencing. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

The trial court sentenced defendant to two to ten years' imprisonment on the assault with intent to commit great bodily harm conviction. It then vacated that sentence and indicated that it would sentence defendant as a habitual offender to three and one-half to ten years' imprisonment. When the court clerk advised the judge that the maximum sentence as a habitual offender was fifteen years, the court changed the sentence to three and one-half to fifteen years' after stating that it had "no control" over the maximum sentence.

The habitual offender statute requires that the trial court exercise its discretion in setting a maximum sentence. *People v Mauch*, 23 Mich App 723, 730; 179 NW2d 184 (1970). A defendant is entitled to resentencing if the sentencing court fails to exercise its discretion because of a mistaken belief in the law. *People v Green*, 205 Mich App 342, 346; 517 NW2d 782 (1994). Here, the trial court's comments suggest that it may have been operating under the mistaken belief that it was required to impose the maximum enhanced sentence when it actually concluded that a shorter sentence was appropriate.

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

Defendant's sentence is vacated. We remand for resentencing. We do not retain jurisdiction.

/s/ Jane E. Markey  
/s/ William C. Whitbeck  
/s/ Jeffrey L. Martlew