

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

MARC TRAVIS ISOM,

Defendant-Appellant.

UNPUBLISHED

December 30, 1997

No. 196788

Calhoun Circuit Court

LC No. 96-000162 FC

Before: MacKenzie, P.J., and Hood and Hoekstra, JJ.

MEMORANDUM.

Defendant's first trial ended in a mistrial. Following a determination by the trial court that retrial was not precluded by the constitutional bar of double jeopardy, a jury convicted defendant of assault with intent to do great bodily harm less than murder, MCL 750.84; MSA 28.279. The trial court then imposed an enhanced term of imprisonment of eight to fifteen years, reflecting defendant's status as a second offender, MCL 769.10; MSA 28.1082. Defendant appeals as of right. We affirm.

The trial court correctly determined that retrial was not precluded by double jeopardy principles. *People v Dawson*, 431 Mich 234, 253, 257; 427 NW2d 886 (1988). The record does not support defendant's claim that the prosecutor engaged in misconduct intended to goad defendant into moving for a mistrial. *Id.* Instead, the record demonstrates that the prosecutor engaged in proper cross-examination of defendant's character witness when the prosecutor inquired of the witness's knowledge of a specific act of misconduct inconsistent with the character traits for which the witness was vouching. MRE 405; *People v Smith*, 97 Mich App 778, 782; 296 NW2d 169 (1980); *People v Fields*, 93 Mich App 702, 707-708; 287 NW2d 325 (1979).

The trial court did not abuse its sentencing discretion when it imposed the eight-year minimum sentence, especially where defendant committed the instant offense while on probation for a conviction of assaulting the same victim with the intent to do great bodily harm, where the instant conviction is the second conviction for the same offense involving the same victim, where defendant has a history of physically abusing the victim, where the instant offense involved an attempt to strangle the victim with a belt that was interrupted by the timely return of the victim's brother, and where the victim needs to be

protected from defendant. *People v Hansford (After Remand)*, 454 Mich 320; 562 NW2d 460 (1997).

Affirmed.

/s/ Barbara B. MacKenzie

/s/ Harold Hood

/s/ Joel P. Hoekstra