

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ULISTER SMITH, JR.,

Defendant-Appellant.

UNPUBLISHED

July 17, 1998

No. 199259

Ottawa Circuit Court

LC No. 96-019578 FH

Before: Murphy, P.J., and Young, Jr. and Michael R. Smith*, JJ.

MEMORANDUM.

Defendant was convicted of first-degree retail fraud, MCL 750.356c(2); MSA 28.588(3)(2), and was sentenced to an enhanced term of imprisonment of three to ten years', reflecting defendant's status as a fourth offender, MCL 769.12; MSA 28.1084. Defendant appeals as of right. We affirm.

Defendant argues that the use of his 1979 larceny conviction to elevate his second-degree retail fraud conviction to a first-degree retail fraud conviction and the use of the same prior conviction to enhance his sentence under the habitual offender laws violates double jeopardy. Defendant's argument fails for two reasons. First, there is no indication in the record that the prior conviction used to establish the crime of first-degree retail fraud was also used to enhance defendant's sentence under the habitual offender laws. Second, even if the same conviction had been used for both purposes, such use was intended by the Legislature and, therefore, does not violate the prohibition against double jeopardy. *People v Denio*, 454 Mich 691, 708-709; 564 NW2d 13 (1997); *People v Whiteside*, 437 Mich 188, 200; 468 NW2d 504 (1991); *People v Brown*, 186 Mich App 350, 353-357; 463 NW2d 491 (1990); see also *People v Bewersdorf*, 438 Mich 55, 72-74; 475 NW2d 231 (1991); *People v Phillips*, 219 Mich App 159, 162-163; 555 NW2d 742 (1996).

Affirmed.

/s/ William B. Murphy
/s/ Robert P. Young, Jr.
/s/ Michael R. Smith

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