

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

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

OCTAVIANO E. MOLINA, JR.,

Defendant-Appellant.

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UNPUBLISHED

March 9, 2001

No. 218997

Genesee Circuit Court

LC No. 98-003320-FC

Before: Whitbeck, P.J., and Murphy and Cooper, JJ.

PER CURIAM.

Defendant was convicted by a jury of first-degree home invasion, MCL 750.110a(2); MSA 28.788(2), first-degree criminal sexual conduct, MCL 750.520b; MSA 28.788(2), and was found guilty by the court of habitual offender-third, MCL 769.11; MSA 28.1083. He was sentenced to consecutive terms of ten to forty years' and life imprisonment, respectively. Defendant appeals as of right. We affirm, but remand for clerical correction of defendant's judgment of sentence.

First, defendant argues that the trial court's aiding and abetting instruction was improper. Because he did not object to the instruction below, appellate review of this issue is waived unless relief is necessary to avoid manifest injustice. *People v Henry*, 239 Mich App 140, 151; 607 NW2d 767 (1999). Contrary to defendant's contention that CJI2d 8.1 incorrectly states the law regarding the requisite intent of an aider and abettor, an aider and abettor can possess the same intent as the principal or know that the principal possesses that intent. *People v King*, 210 Mich App 425, 430; 534 NW2d 534 (1995); see also *People v Carines*, 460 Mich 750, 768; 597 NW2d 130 (1999); *People v Evans*, 173 Mich App 631, 636; 434 NW2d 452 (1988). The jury instruction was not erroneous, thus no manifest injustice resulted.

Next, defendant argues that he was denied a fair trial because of prosecutorial misconduct during closing argument. Because defendant did not object to the challenged remarks below, review is precluded unless a curative instruction could not have eliminated the prejudicial effect or where failure to consider the issue would result in a miscarriage of justice. *People v Stanaway*, 446 Mich 643, 687; 521 NW2d 557 (1994). Questions of prosecutorial misconduct are decided on a case-by-case basis, and this Court must examine the pertinent portion of the record and evaluate the prosecutor's remarks in context. *People v Noble*, 238 Mich App 647, 660; 608 NW2d 123 (1999). A prosecutor is permitted to argue from the facts that a witness is

not worthy of belief. *People v Avant*, 235 Mich App 499, 512; 597 NW2d 864 (1999). Where the remarks as a whole are fair, the mere statement of the prosecutor's belief in the honesty of a witness does not constitute error. *People v McElhaney*, 215 Mich App 269, 284; 545 NW2d 18 (1996). Here, the prosecutor's remarks are supported by the evidence. Any possible prejudice could have been alleviated by a curative instruction. *Stanaway, supra*. There was no miscarriage of justice.

Finally, defendant argues that remand is necessary to correct the judgment of sentence. Though we need not remand to correct the alleged error that defendant was ordered to serve his sentences consecutive to a sentence he was serving in another case — the judgment of sentence contains no such reference — we do remand for a clerical correction to reflect that defendant is entitled to credit for 188 days served as admitted by the prosecutor.

Affirmed, but remanded for the clerical correction of defendant's judgment of sentence. We do not retain jurisdiction.

/s/ William C. Whitbeck  
/s/ William B. Murphy  
/s/ Jessica R. Cooper