STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

AARON A. CROO,

Defendant-Appellant.

UNPUBLISHED
January 17, 1997

No. 183956
LC No. 94-008886

Before: Taylor, P.J., and Markey and N.O. Holowka,* JJ.

PER CURIAM.

Pursuant to a bench trial, defendant was convicted of felonious assault, MCL 750.82; MSA 28.277, and ethnic intimidation, MCL 750.147b; MSA 28.344(2). The trial court sentenced defendant to six months in jail and two years' probation which included as conditions 100 hours of community service in an African-American organization and the completion of his college education. Defendant appeals as of right, and we affirm.

First, defendant asserts that his convictions for felonious assault and ethnic intimidation violate double jeopardy principles. Upon our de novo review, we disagree. *People v White*, 212 Mich App 298, 304-305; 536 NW2d 876 (1995).

As we stated in *White, supra* at 305, "[t]he double jeopardy provision of the United States Constitution, US Const, Am V, and its counterpart in the Michigan Constitution, Const 1963, art 1, §15, protect citizens from suffering multiple punishments and successive prosecutions for the same offense. *People v Harding*, 443 Mich 693, 699; 506 NW2d 482 (1993)." Defendant's double jeopardy challenge here involves the multiple punishments strand of the Double Jeopardy Clause, which insures that a defendant's total punishment does not exceed that authorized by the Legislature. *People v McClain*, 218 Mich App 613, 615-616; ___ NW2d ___ (1996); *People v Lugo*, 214 Mich App 699, 706; 542 NW2d 921 (1995). Indeed, "legislative intent is the beginning and end of the inquiry." *McClain, supra*. Our review of the legislative intent underlying these two criminal statutes convinces us that defendant's convictions do not violate double jeopardy principles.

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

As we observed in *Lugo, supra* at 706:

> Because the power to define crime and fix punishment is wholly legislative, the Double Jeopardy Clauses are not a limitation on the Legislature, and the Legislature may specifically authorize penalties for what would otherwise be the "same offense." Cumulative punishment of the same conduct does not necessarily violate the prohibition against double jeopardy under either the federal system or the state system. The determinative inquiry is whether the Legislature intended to impose cumulative punishment for similar crimes.
>
> Determination of legislative intent involves traditional considerations of the subject, language, and history of the statutes. The court should consider whether each statute prohibits conduct violative of a social norm distinct from the norm protected by the other, the amount of punishment authorized by each statute, whether the statutes are hierarchical or cumulative, and any other factors indicative of legislative intent. [Citations omitted.]

A comparison of the elements comprising each offense is instructive when performing a double jeopardy analysis. See *People v Crawford*, 187 Mich App 344, 349; 467 NW2d 818 (1991).

The elements of felonious assault are (1) a simple assault, (2) aggravated by the use of a dangerous weapon, and (3) the present ability or apparent present ability to commit a battery. MCL 750.82; MSA 28.277; *People v Grant*, 211 Mich App 200, 202; 535 NW2d 581 (1995). The purpose of the felonious assault statute is to "discourage an assaulting person from inflicting even more serious injuries by using a weapon." *People v Sturgis*, 130 Mich App 54, 65; 343 NW2d 230 (1983), aff'd 427 Mich 392, 398-400, 409; 397 NW2d 783 (1986). In contrast, ethnic intimidation is established when a person maliciously and with specific intent to intimidate or harass another person because of that person's race, color, religion, gender, or national origin (a) causes physical contact with another, (b) damages, destroys, or defaces another's real or personal property, or (c) threatens, *by word or act*, to do (a) or (b) if there is reasonable cause to believe such an act will occur. MCL 750.147b(1)(a)-(c); MSA 28.344(2)(1)(a)-(c). The statute was created to address "bigotry-motivated violence [which] is especially repugnant to society and not to be countenanced." House Legislative Analysis, HB 4113, January 20, 1989. Furthermore, the statute "offers not only stiff penalties for an offense prompted by bigotry, but also redress for victims of such crimes" by permitting victims to file civil suits against those who commit crimes of ethnic intimidation *Id.;* MCL 750.147b(3); MSA 28.344(2)(3); see also *People v Richards*, 202 Mich App 377, 378; 509 NW2d 528 (1994).

We believe that the Legislature intended to impose cumulative punishments for the instant crimes where defendant, along with three or four other men, chased the African-American victim while holding a baseball bat after one of the men shouted "Negro" and "[t]here go that nigger," "[g]et that nigger." The crimes of felonious assault and ethnic intimidation are not, as defendant asserts, intended to merely prevent assaults on a person. Rather, the former seeks to prevent enhanced injury to the victim of an assault—someone who believes he or she is in immediate threat of physical bodily harm—while the

latter focuses on intimidation, harassment, *or* assault and battery due to a person's race, color, religion, gender or national origin. The socially repugnant motive underlying this type of intimidation, harassment, or assault and battery distinguishes ethnic intimidation from any mere assault. Thus, we find that these two offenses address two different social concerns. *Lugo, supra*. Further, each statute permits a different amount of punishment. *Id.* Whereas a person cannot be sentenced to more than two years' imprisonment for ethnic intimidation, MCL 750.147b(2); MSA 28.344(2)(2), a person could receive up to four years' imprisonment for felonious assault, Michigan Sentencing Guidelines, (2d ed, 1988), p 11. Also, the use of a weapon distinguishes felonious assault from any type of assault or physical contact described in the ethnic intimidation statute. Additionally, the felonious assault statute makes no reference to a "specific intent" to intimidate or harass based upon a person's race, color, religion, gender, or national origin. See *Crawford, supra*.

Accordingly, because the Legislature viewed felonious assault and ethnic intimidation as two distinct crimes and gave them differing penalties and unique elements, we hold that defendant's convictions of both felonious assault and ethnic intimidation do not violate double jeopardy principles.

Second, defendant asserts that the trial court erred in holding a joint bench trial with all three co-defendants in light of a prior ruling where another judge, Judge Townsend, granted defendant's motion for severance. Considering (1) Judge Townsend's statement on the record that a severed trial is unnecessary if defendant and his co-defendants waive their right to a jury trial, (2) defense counsel's agreement with this statement, and (3) defendant's express waiver of his right to a jury trial at the same hearing, we find that Judge Youngblood did not abuse her discretion by holding the consolidated bench trial for these three criminal defendants. See *People v Cadle (On Remand)*, 209 Mich App 467, 468-469; 531 NW2d 761 (1995).

Finally, defendant argues that the trial court's findings of fact and conclusions of law were insufficient as a matter of law. We disagree. The court's factual findings were not erroneous, as we are not left with a definite and firm conviction that a mistake was made, and they were sufficiently specific to aid this Court in reviewing the law that the trial court applied. MCR 2.517(A); MCR 6.403; *People v Swirles (After Remand)*, 218 Mich App 133, 136; 553 NW2d 357 (1996); *People v Armstrong*, 175 Mich App 181, 184; 437 NW2d 343 (1989). Because the court's findings established that it was aware of the issues and correctly applied the law, *People v Smith*, 211 Mich App 233, 235; 535 NW2d 248 (1995), we find no error.

Affirmed.

/s/ Clifford W. Taylor
/s/ Jane E. Markey
/s/ Nick O. Holowka