

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

HERBERT VICTOR JOHNSON,

Defendant-Appellant.

UNPUBLISHED

January 6, 1998

No. 198260

Muskegon Circuit Court

LC No. 96-013920 FC

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

MEMORANDUM.

Defendant appeals as of right from his bench trial conviction of assault with intent to commit murder, MCL 750.83; MSA 28.278. This appeal is being decided without oral argument pursuant to MCR 7.214(E). We affirm.

Defendant first contends that the evidence was insufficient to support his conviction. To the contrary, the evidence found credible by the trial court indicated that defendant, after threatening the victim with a knife and indicating he would kill her, got into a struggle with the victim and, in the course of the struggle, attempted to force the knife into her chest. This was more than sufficient to establish defendant's intent to kill, *People v Hollis*, 140 Mich App 589; 366 NW2d 29 (1985); *People v Anderson*, 112 Mich App 640; 317 NW2d 205 (1981), and thus to permit a rational trier of fact to find defendant's guilt of the charged offense proved beyond a reasonable doubt. *People v Petrella*, 424 Mich 221, 269-270; 380 NW2d 11 (1985).

Defendant's remaining contention is that his sentence to imprisonment for twelve years to life is illegal. We agree. MCL 769.9(2); MSA 28.1081(2); *People v Boswell*, 95 Mich App 405; 291 NW2d 57 (1980); *People v Harper*, 39 Mich App 134; 197 NW2d 338 (1972). The trial court may impose a sentence of a term of years or a sentence of life imprisonment, but it may not combine such sentences.

Defendant's conviction is affirmed; his sentence is vacated and this cause is remanded for resentencing. We do not retain jurisdiction.

/s/ Barbara B. MacKenzie

/s/ Harold Hood

/s/ Joel P. Hoekstra