

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

FRANK SAVAGE, III,

Defendant-Appellant.

UNPUBLISHED

February 25, 1997

No. 187809

Detroit Recorder's Court

LC No. 94-002968

Before: Hood, P.J., and Saad and T.S. Eveland,* JJ.

MEMORANDUM.

After defendant pleaded nolo contendere to assault with intent to murder, MCL 750.83; MSA 28.278, assault with intent to rob, armed, MCL 750.89; MSA 28.284, and felony firearm, MCL 750.227b; MSA 28.424(2), he was sentenced to ten to twenty years on each assault conviction and to two years on the felony firearm. He claims on appeal that the sentencing court abused its discretion in scoring the guidelines. We find no error and affirm.

Defendant claims that it was error for the sentencing court to score defendant twenty-five points under OV2 (physical attack and/or injury), for the bodily injury of the victim. At the hearing, the victim testified that defendant shot her during a robbery at a Coney Island. She testified that she was grazed by the bullet (in the right buttock), that the bullet broke the skin, that she was "swollen red," and that she had to go to the hospital to get a tetanus shot.

The instructions for scoring OV2 in the Sentencing Guidelines Manual provide that a score of 25 is appropriate when the victim received "bodily injury and/or [was] subjected to terrorism." A score of zero is appropriate where there is "no injury" – the notes direct the court to "[s]core '0' if a victim is struck in an assaultive crime and there is no bodily injury." Defendant thus contends that the victim here suffered no "bodily injury." We disagree. Though the injury was not life-threatening, it was nonetheless a bodily injury. We find no abuse of discretion.

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

Affirmed.

/s/ Harold Hood

/s/ Henry William Saad

/s/ Thomas S. Eveland