

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee

v

JAMES ALAN ENGELMANN,

Defendant-Appellant

UNPUBLISHED

March 21, 1997

No. 191950

Genesee Circuit Court

LC No. 92-046831

Before: Corrigan, C.J. and Doctoroff and R.R. Lamb,* JJ.

PER CURIAM.

Defendant pleaded guilty to charges of possession of burglar tools, MCL 750.116; MSA 28.311, and being an habitual offender, third offense, MCL 769.11; MSA 28.1083. The trial court sentenced him to imprisonment for a term of six years, eight months to twenty years. Defendant now appeals his sentence, arguing that the trial court erred in scoring offense variable 25. We affirm.

Offense Variable 25 allows 15 points to be scored if the defendant engages in 3 or more contemporaneous criminal acts which have not and will not result in a separate conviction. Under OV-25, an act is “contemporaneous” if it “occurs within twenty four hours of the offense upon which the defendant is being sentenced or within six months if it is identical to or similar in nature.” In this case, the trial court assessed 15 points under OV-25 pursuant to allegations that defendant participated in several instances of breaking and entering within six months of the crimes for which he was being sentenced. As part of defendant’s plea agreements, defendant was never formally charged with these crimes and the prosecutor agreed not to pursue them.

This Court will affirm a sentencing court’s scoring decision where there is evidence existing to support the score. *People v Williams*, 191 Mich App 269, 276; 477 NW2d 877 (1991). A sentencing court may consider all record evidence before it when calculating the guidelines. *People v Ratkov (After Remand)*, 201 Mich App 123, 125; 505 NW2d 886 (1993). Where a defendant was originally charged with several contemporaneous crimes, but, pursuant to a plea bargain, some of the original charges were dropped, points may be assessed under OV-25 for the charged crimes which

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

were not pursued by the prosecutor. *People v Szczesniak*, 186 Mich App 492, 493-494; 465 NW2d 22 (1990). In this case, the trial court scored 15 points for OV-25 based on alleged crimes that, pursuant to the plea agreement, were not charged or pursued by the prosecution. The evidence that defendant committed several contemporaneous crimes of breaking and entering was sufficient to support the trial court's scoring in this case. *Williams, supra*; *Szczesniak, supra*. Accordingly, we affirm defendant's sentence.

Affirmed.

/s/ Maura D. Corrigan
/s/ Martin M. Doctoroff
/s/ Richard R. Lamb