

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DANIEL ESTRADA,

Defendant-Appellant.

UNPUBLISHED
December 8, 2000

No. 225960
Calhoun Circuit Court
LC No. 99-001552-FC

Before: Bandstra, C.J., and Fitzgerald and D. B. Leiber*, JJ.

PER CURIAM.

Defendant pleaded nolo contendere to third-degree criminal sexual conduct, MCL 750.520d(1)(b); MSA 28.788(4)(1)(b), and was sentenced, as a second-offense habitual offender, MCL 769.10; MSA 28.1082, to serve an enhanced prison term of 88 to 270 months. He appeals on leave granted, arguing that he is entitled to resentencing because the trial court misconstrued and misscored the applicable statutory sentencing guidelines. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Pursuant to MCL 777.43(1); MSA 28.1274(53)(1), Offense Variable 13 is scored based upon a defendant's "continuing pattern of criminal behavior" and permits ten points to be assessed where "[t]he offense was part of a pattern of felonious criminal activity involving a combination of 3 or more crimes against a person or property." Subsection (2) of the statutory sentencing guideline explains in pertinent part the proper scoring of OV 13:

(a) For determining the appropriate points under this variable, all crimes within a 5-year period, including the sentencing offense, shall be counted regardless of whether the offense resulted in a conviction. [MCL 777.43(2)(a); MSA 28.1274(53)(2)(a).]

At sentencing in this case, defendant's counsel objected to a score of ten points for OV 13, based upon defendant's pattern of criminal activity, including the current offense, dismissed charges in 1995 of assault with intent to murder, discharge of a firearm intentionally aimed without malice, and felony-firearm, a 1992 felonious assault conviction, a 1988 second-degree retail fraud

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

conviction, a 1985 attempted breaking and entering a motor vehicle conviction, and a 1985 attempted breaking and entering conviction. The trial court interpreted the statutory phrase, “all crimes within a 5-year period,” to limit only the applicability of crimes within that time period that did not result in conviction. Thus, the trial court reasoned that all convictions, regardless of age, were relevant in scoring OV 13.

This Court reviews de novo questions of law regarding interpretation of the statutory sentencing guidelines. See *People v Lyons*, 222 Mich App 319, 322; 564 NW2d 114 (1997). Our goal in interpreting statutes is to ascertain the intent of the Legislature by examining the specific language of the statute. If the plain and ordinary meaning of the language is clear, judicial construction is generally neither permitted nor necessary. *People v Harns*, 227 Mich App 573, 576-577; 576 NW2d 700 (1998). We find the trial court’s interpretation of the plain language of Subsection (2)(a) to be flawed and contrary to its clear meaning. We construe the five-year limitation language to apply to “all crimes, ... regardless of whether the offense resulted in a conviction.” Thus, in this case, the crimes relevant to scoring defendant’s OV 13 included the current felony offense of third-degree CSC and the 1995 felony charges of assault with intent to commit murder and possession of a firearm during the commission of a felony, which were dismissed. However, because defendant had engaged in a pattern of criminal activity, including at least three felony offenses within the previous five years, he was properly scored ten points for OV 13.

Affirmed.

/s/ Richard A. Bandstra
/s/ E. Thomas Fitzgerald
/s/ Dennis B. Leiber