

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

THOMAS LOYD SCOTT,

Defendant-Appellant.

UNPUBLISHED

April 17, 2001

No. 219144

Wexford Circuit Court

LC No. 96-004841-FH

Before: Hoekstra, P.J., and Whitbeck and Cooper, JJ.

PER CURIAM.

After a jury convicted defendant Thomas Loyd Scott of unarmed robbery,¹ the trial court sentenced him to an enhanced prison term of fifteen to thirty years as a fourth habitual offender.² In his first appeal, Scott successfully challenged his enhanced sentence on the ground that the trial court improperly considered three previous felony convictions arising out of the same transaction.³ This Court affirmed his conviction, but remanded for resentencing under the second habitual offender statute⁴ without retaining jurisdiction.⁵ On remand, the trial court complied with this Court's instructions and resentenced defendant Scott to 7½ to 22½ years' imprisonment as a second habitual offender.⁶ Scott now appeals as of right from this second sentence. We affirm

I. Procedural History Following Remand

The trial court resentenced Scott in April 1999. At the resentencing hearing, Scott objected to the ten points the trial court had assessed under offense variable (OV) 6 of the

¹ MCL 750.530; MSA 28.798.

² MCL 769.12; MSA 28.1084.

³ *People v Preuss*, 436 Mich 714, 717; 461 NW2d 703 (1990).

⁴ MCL 769.10; MSA 28.1082.

⁵ *People v Scott*, unpublished per curiam opinion of the Court of Appeals (Docket No. 200255, issued January 22, 1999).

⁶ MCL 769.10; MSA 28.1082.

judicial sentencing guidelines, which allowed ten point if two or more victims had been put “in danger of injury or loss of life” by the crime. The trial court, however, refused to alter its previous decisions on this issue from its ruling at the first sentencing hearing, concluding that a score of ten points under OV 6 was appropriate because there were several people in the party store Scott robbed at the time he robbed it and that the threat of harm to these individuals was “implicit” in the conduct of the offense.

Scott also argued that the trial court should redact the presentence investigation report (PSIR) to exclude references to his juvenile record because the alleged offenses listed there had been expunged. He, however, clarified this argument, contending that these alleged juvenile offenses should not be considered because the presentence investigator could not determine whether any of his nine arrests as a juvenile led to charges and an adjudication, much less that any such charges had been substantiated.⁷ Consequently, Scott argued, the trial court could not draw any negative inferences from his juvenile history, those arrests were irrelevant under MCR 6.425(D)(2)(b), and their presence in the PSIR prevented the department of corrections from transferring him to a prison at which he could learn new skills. The trial court refused to remove those references from the PSIR, noting that the PSIR clearly and accurately stated that the disposition of most of the offenses was unknown, the court had verified that petitions had been filed in those cases, and that they remained relevant as evidence of his “social history.” Further, citing *People v Smith*,⁸ the trial court noted that even juvenile convictions that have been expunged may be considered when imposing sentence on an adult.

Scott also argued that he should be sentenced under the new statutory sentencing guidelines,⁹ which would be more favorable than the judicial sentencing guidelines, because they were the best evidence of the Legislature’s view of an appropriate sentence in the case and because they applied to habitual offenders. The trial court pointed out that the judicial sentencing guidelines still applied to his offense, which was committed before the January 1, 1999, effective date for the new statutory guidelines.¹⁰ The trial court exercised its discretion to sentence Scott as an habitual offender, observing that he had six previous felony convictions and five previous misdemeanor convictions, and that the robbery in this case created a dangerous situation. Because the trial court imposed the enhanced sentence, it did not apply the judicial sentencing guidelines to determine his sentence of 7½ years to 22½ years’ imprisonment, with credit for the 1,079 days he had already served.

⁷ The PSIR indicates that Scott had contact with the police seven times between 1975 and 1979 in which the subsequent “disposition [was] unknown,” that when Scott was found possessing marijuana in 1977 he was “released to his mother, warned and referred” to treatment, and that when he was arrested for larceny and unlawful driving away of an automobile in 1980, “no police action was taken per father.”

⁸ *People v Smith*, 437 Mich 293; 470 NW2d 70 (1990).

⁹ MCL 777.1 *et seq.*; MSA 28.1274(11) *et seq.*

¹⁰ See MCL 769.34; MSA 28.1097(3.4).

II. Statutory Sentencing Guidelines

A. Standard Of Review

On appeal, Scott first contends that the trial court erred when it did not resentence him under the statutory sentencing guidelines. Whether a statute applies in a particular case presents a question of law subject to review de novo.¹¹

B. *Schultz*

Scott relies heavily on *People v Schultz*,¹² to argue that the statutory sentencing guidelines should be applied retroactively to his offense. However, *Schultz* is distinguishable because the ameliorative amendment of the statute in that case was silent concerning whether its affect was solely prospective.¹³ The Legislature has made clear that the judicial sentencing guidelines apply to offenses committed before January 1, 1999, and that the statutory sentencing guidelines apply only prospectively, stating:

Except as otherwise provided . . . , the minimum sentence imposed by a court of this state for a felony enumerated in part 2 of chapter XVII *committed on or after January 1, 1999* shall be within the appropriate sentence range under the version of those sentencing guidelines in effect on the date the crime was committed.¹⁴

This statute requires no interpretation and has been applied as it is written, meaning that these statutory sentencing guidelines “have no bearing on” offenses committed before January 1, 1999, such as the unarmed robbery in this case.¹⁵ Thus, this argument has no merit.

III. Scott’s Juvenile History

A. Standard Of Review

Scott contends that the trial court erred when it refused to remove the references to his juvenile contacts with the police from the PSIR and when it considered those police contacts to impose his sentence. We review the trial court’s findings on the alleged inaccuracies for clear error¹⁶ and the sentence it imposed for an abuse of discretion.¹⁷

¹¹ See *Grzesick v Cepela*, 237 Mich App 554, 559; 603 NW2d 809 (1999).

¹² *People v Schultz*, 435 Mich 517; 460 NW2d 505 (1990).

¹³ *Id.* at 526, 533.

¹⁴ MCL 769.34(2); MSA 28.1097(3.4)(2) (emphasis supplied).

¹⁵ *People v Oliver*, 242 Mich App 92, 99; 617 NW2d 721 (2000).

¹⁶ MCR 2.613(C).

¹⁷ *People v Milbourn*, 435 Mich 630, 635-636; 461 NW2d 1 (1990).

B. Presentence Reports

Due process,¹⁸ legislation,¹⁹ and the court rules entitle a defendant to challenge the relevancy or accuracy of information in his PSIR.²⁰ Once a defendant objects to the information in the PSIR, the trial court must respond to the defendant's argument.²¹ Inaccurate or irrelevant information must be corrected or deleted from the PSIR before the trial court forwards it to the department of corrections.²² Scott does not contend that the PSIR incorrectly reports that, while he was a juvenile, he was arrested or otherwise had contact with the police as the PSIR reports. Rather, he challenges the trial court's conclusion that this information is relevant to sentencing because, Scott contends, it is not probative of whether he is a recidivist. However, the trial court's remarks at resentencing do not lead us to conclude that it viewed Scott's contact with the police as relevant to recidivism. Instead, the trial court specifically stated that this information was relevant as Scott's social history. We interpret that comment to mean that the trial court included that information in a broad category that encompasses other information in a PSIR touching on Scott's background, such as the names and ages of his family members, his marital status, education, and work history. This information not only helps to distinguish Scott as an individual among other prisoners, it is relevant because it helps the Department of Corrections determine what rehabilitative programs might benefit him. For example, because one of his previous contacts with the police as a juvenile was for possessing marijuana, the Department may assess whether Scott currently needs substance abuse treatment and offer that treatment to him if he is eligible for any of the programs it offers. In sum, we can locate no clear error in the trial court's finding that the information concerning Scott's juvenile record was accurate and relevant.

Absent evidence that the information in the PSIR was actually incorrect or irrelevant, the trial court was entitled to rely on the PSIR to impose the new sentence in this case.²³ Thus, it could not have abused its discretion by relying on this information to impose sentence. Furthermore, there is little evidence on the record that the trial court considered this information at all when crafting the sentence it imposed on Scott. The trial court explicitly stated that it had decided to enhance Scott's sentence because of his previous adult felony and misdemeanor convictions and that the circumstances of the offense warranted the sentence. In all, the trial court conducted a thoughtful hearing, at which it allowed Scott to make his full argument concerning the appropriate factors for sentencing, gave great thought to the appropriate sentence, and properly placed its reasoning on the record. We see no abuse of discretion in these facts.

¹⁸ *People v Hoyt*, 185 Mich App 531, 533-534; 462 NW2d 793 (1990).

¹⁹ MCL 771.14(6); MSA 28.1144(6).

²⁰ MCR 6.425(D)(2)(b).

²¹ *People v McAllister*, 241 Mich App 466, 473; 616 NW2d 203 (2000).

²² *Hoyt*, *supra* at 535; MCR 6.425(D)(3).

²³ *People v Grant*, 455 Mich 221, 233-234; 565 NW2d 389 (1997).

IV. Scoring The Guidelines

We dispense with Scott's final claim of error, that the trial court erred in assessing him ten points under OV 6. It is well-settled that the judicial sentencing guidelines do not apply to habitual offenders.²⁴ Thus, no matter how inaccurately the guidelines were scored in this case – and we cannot say that they were scored inaccurately – the score cannot serve as grounds for yet another remand for resentencing.

Affirmed.

/s/ Joel P. Hoekstra
/s/ William C. Whitbeck
/s/ Jessica R. Cooper

²⁴ *People v Hansford (After Remand)*, 454 Mich 320, 323; 562 NW2d 460 (1997).