

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DEMETRIUS D. MCCLOUD,

Defendant-Appellant.

UNPUBLISHED

August 27, 2002

No. 232248

Wayne Circuit Court

LC No. 00-004123

Before: Gage, P.J., and Cavanagh and Wilder, JJ.

PER CURIAM.

Defendant appeals by right his bench trial conviction of one count of felonious assault, MCL 750.82, and one count of felony-firearm, MCL 750.227b. He received consecutive sentences of three to forty-eight months' imprisonment for the felonious assault conviction and two years for the felony-firearm conviction. We affirm, but remand for the correction of a clerical error in the judgment of sentence.

On appeal, defendant first argues that the trial court reached an inconsistent verdict. We disagree. The verdict reached in a bench trial must be consistent with the trial court's findings of fact. See *People v Smith*, 231 Mich App 50, 53; 585 NW2d 755 (1998). Here, the court found the testimony of only one complainant credible, therefore, it was not inconsistent to find defendant guilty of only one count of felonious assault. Because there were no factual inconsistencies in the trial court's verdict, no error occurred. See *id.* at 52-53.

Next, defendant claims that the prosecution did not present sufficient evidence to convict him of felony-firearm. We disagree. This Court views the evidence in the light most favorable to the prosecution, drawing all reasonable inferences in support of the verdict, and must affirm a bench trial conviction where the evidence justifies a rational trier of fact in finding that the essential elements of the crime were proved beyond a reasonable doubt. *People v Nowack*, 462 Mich 392, 399-400; 614 NW2d 78 (2000); *People v Nunez*, 242 Mich App 610, 615; 619 NW2d 550 (2000).

A felony-firearm conviction requires the prosecution to prove that the defendant (1) possessed a firearm (2) during the commission or attempt to commit a felony. *People v Davis*, 216 Mich App 47, 53; 549 NW2d 1 (1996). Here, that defendant possessed a firearm, as defined by MCL 8.3t, was established through the victim's testimony regarding the size, make, and type of gun that defendant used and the testimony of two other witnesses who indicated that

defendant possessed a gun and put the gun to the victim's head. See *Davis, supra* at 53-54; *People v Hayden*, 132 Mich App 273, 296; 348 NW2d 672 (1984). Finally, the prosecution presented sufficient evidence that defendant committed a felonious assault, i.e., a felony, while possessing the firearm. See *People v Sturgis*, 130 Mich App 54, 60; 343 NW2d 230 (1983).

Defendant also argues that the sentence imposed by the trial court with regard to the felonious assault conviction was outside the statutory guidelines, violating the principle of proportionality. This argument is without merit. Felonious assault is a class F offense. MCL 777.16d. The presentence investigation report (PSIR) indicated that defendant's prior record variable (PRV) score totaled ten points, placing him in PRV level C, and the offense variable (OV) score totaled forty points, placing him in level III; therefore, the minimum sentence range, pursuant to MCL 777.67, was two to seventeen months' imprisonment. The trial court sentenced defendant to a minimum sentence of three to seventeen months' imprisonment. Accordingly, defendant's sentence was within the guidelines' range and must be affirmed. See MCL 769.34(10); *People v Babcock*, 244 Mich App 64, 72; 624 NW2d 479 (2000); *People v Leversee*, 243 Mich App 337, 348; 622 NW2d 325 (2000). However, because the judgment of sentence improperly indicates that defendant's jail-time credit of 256 days applied to his felonious assault sentence instead of his felony-firearm sentence, which was being served first, we remand this case to the trial court for the ministerial task of correcting the judgment of sentence. See MCR 6.435(A); MCR 7.216(A)(7); *People v Herndon*, 246 Mich App 371, 392; 633 NW2d 376 (2001).

Affirmed, but remanded for issuance of a corrected judgment of sentence. We do not retain jurisdiction.

/s/ Hilda R. Gage
/s/ Mark J. Cavanagh
/s/ Kurtis T. Wilder