

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

STEPHEN SCOTT GOODRICH,

Defendant-Appellant.

UNPUBLISHED

September 13, 2002

No. 233636

Saginaw Circuit Court

LC No. 00-018906-FC

Before: Markey, P.J., and Cavanagh and R. P. Griffin*, JJ.

MEMORANDUM.

Defendant appeals as of right his concurrent sentences of ten to twenty years' imprisonment following his jury trial convictions of first-degree home invasion, MCL 750.110a(2), and arson of a dwelling house, MCL 750.72. We affirm.

On appeal, defendant argues that he is entitled to resentencing because the trial court mis-scored offense variable (OV) 1 and OV 10. We disagree. The legislative sentencing guidelines apply to offenses committed on or after January 1, 1999. MCL 769.34(2). This Court must affirm minimum sentences within the guidelines sentence range unless there was an error in scoring the guidelines or inaccurate information relied on in determining the sentence. MCL 769.34(10); *People v Leversee*, 243 Mich App 337, 348; 622 NW2d 325 (2000). The trial court's scoring of the guidelines is reviewed for an abuse of discretion and if there is evidence that supports a particular score, the trial court's decision will be affirmed. See *People v Cain*, 238 Mich App 95, 129-130; 605 NW2d 28 (1999).

Here, defendant's prior record variable (PRV) score totaled thirty points, placing him in PRV level D, and the OV score totaled sixty-five points, placing him in OV level V; therefore, the minimum sentence range for these class B offenses was 78-130 months. See MCL 777.16c; 777.16f; 777.63. Defendant received a minimum sentence within the guidelines but challenges the scoring of two offense variables. In particular, defendant claims that OV 10 (exploitation of a vulnerable victim), MCL 777.40, should have been scored as zero instead of fifteen points because his behavior did not amount to "predatory conduct" involving a vulnerable victim. Defendant also claims that OV 1 (aggravated use of a weapon), MCL 777.31, should have been scored as zero instead of five points because when he used a knife to cut up his wife's clothing and other personal effects, a weapon was not displayed or implied to a victim. However, even if

* Former Supreme Court justice, sitting on the Court of Appeals by assignment.

we agreed with defendant's arguments and reduced his guidelines score by the contested twenty points, his minimum sentence would still be within the applicable guidelines' range at OV level IV. See MCL 777.63. Accordingly, the alleged scoring errors, if any, would be harmless and defendant would not be entitled to resentencing. See MCL 769.34(10); *People v Babcock*, 244 Mich App 64, 72; 624 NW2d 479 (2000).

Affirmed.

/s/ Jane E. Markey
/s/ Mark J. Cavanagh
/s/ Robert P. Griffin