

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

V

LARRY JAY THOMPSON,

Defendant-Appellant.

UNPUBLISHED

November 19, 2002

No. 233259

Kent Circuit Court

LC No. 00-008395-FC

Before: Griffin, P.J., and Gage and Meter, JJ.

MEMORANDUM.

Following a bench trial, defendant was convicted of kidnapping, MCL 750.349, and aggravated assault, MCL 750.81a. He was sentenced to serve seven to fifty years in prison for the kidnapping conviction and one year in the county jail for the assault conviction. He appeals as of right, challenging the sentencing court's scoring of Offense Variables 1, 2, 3, and 7. We affirm.

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 sentencing court's scoring of the guidelines is reviewed for an abuse of discretion and, if there is evidence to support a particular score, the court's decision will be affirmed. See *People v Cain*, 238 Mich App 95, 129-130; 605 NW2d 28 (1999).

Other than OV 1, we find no merit to defendant's scoring challenges. As to OV 1, even if we were to find that defendant's air-propelled BB gun fell within the statutory exception to the definition of "firearm" in MCL 8.3t,¹ the reduction in score for this variable from fifteen points

¹ The statutory provision, MCL 8.3t, provides:

The word "firearm," except as otherwise specifically defined in the statutes, shall be construed to include any weapon from which a dangerous projectile may be propelled by using explosives, gas or air as a means of propulsion, except any smooth bore rifle or handgun designed and manufactured

(continued...)

to ten points would not affect the overall OV level. Thus, because defendant's minimum sentence falls within the proper guidelines range, any error in scoring OV 1 was harmless, and this Court must affirm the sentence. MCL 769.34(10).

Affirmed.

/s/ Richard Allen Griffin

/s/ Hilda R. Gage

/s/ Patrick M. Meter

(...continued)

exclusively for propelling BB's not exceeding .177 caliber by means of spring, gas or air.