

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

WILLIE SCOTT,

Defendant-Appellant.

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UNPUBLISHED

October 26, 2004

No. 248764

St. Clair Circuit Court

LC No. 02-003236-FH

Before: Whitbeck, C.J., and Jansen and Bandstra, JJ.

PER CURIAM.

Defendant Willie Scott appeals as of right from his conviction of possession with intent to deliver less than fifty grams of cocaine, MCL 333.7401(2)(a)(iv), entered after a bench trial. We affirm. We decide this appeal without oral argument pursuant to MCR 7.214(E).

**I. Basic Facts And Procedural History**

Police officers executed a search warrant at a residence occupied by Scott and several other people. A search of Scott incident to arrest revealed a knotted plastic bag partially concealed on his person. The bag contained individually wrapped pieces of crack cocaine, as well as a piece of paper. Scott was briefly held in a closet area, and subsequently the bag was discovered to be missing from his person. A search of the closet area revealed a plastic bag containing individually wrapped pieces of crack cocaine and a piece of paper like that observed on Scott's person before he was placed in the closet. The trial court found Scott guilty as charged. The trial court concluded that the evidence supported a finding that the plastic bag found in the closet area was the same bag that was originally observed on Scott's person.

The statutory sentencing guidelines recommended a minimum sentence range of ten to thirty-four months. The trial court scored Offense Variable (OV) 15, MCL 777.45, aggravated controlled substance offenses, at five points on the ground that the offense involved possession with intent to deliver a controlled substance in an amount that indicated trafficking activity. The trial court scored OV 19, MCL 777.49, interference with administration of justice, at ten points on the ground that Scott attempted to conceal the bag of cocaine. Scott did not object to the scoring of the guidelines. The trial court sentenced Scott to a minimum term within the guidelines.

## II. Sufficiency Of The Evidence

### A. Standard Of Review

When reviewing a challenge to the sufficiency of the evidence in a bench trial, we view the evidence presented in a light most favorable to the prosecution, and determine whether a rational trier of fact could find that the essential elements of the crime were proven beyond a reasonable doubt. The trier of fact may make reasonable inferences from direct or circumstantial evidence in the record.<sup>1</sup> We review a trial court's findings of fact for clear error.<sup>2</sup>

### B. Possession Of A Controlled Substance

Possession of a controlled substance exists when a defendant has dominion or control over the substance with knowledge of its possession or character.<sup>3</sup> Possession of a controlled substance may be actual or constructive. Mere presence is insufficient. Some additional link between the defendant and the controlled substance must be shown. Circumstantial evidence and reasonable inferences drawn from the evidence are sufficient to prove possession.<sup>4</sup>

### C. The Evidence Supporting The Conviction

Scott argues that the evidence was insufficient to support his conviction of possession with intent to deliver less than fifty grams of cocaine. We conclude, however, that the trial court was entitled to accept the police officers' testimony regarding the description of the bag observed on Scott's person and the subsequent discovery of the bag in the closet area<sup>5</sup> and to infer that defendant dropped the bag in the closet area.<sup>6</sup>

## III. Sentencing

### A. Standard Of Review

A sentencing court has discretion in determining the number of points to be scored in calculating the sentencing guidelines. A scoring decision for which there is any evidence will be upheld.<sup>7</sup>

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<sup>1</sup> *People v Petrella*, 424 Mich 221, 268-270, 275; 380 NW2d 11 (1985); *People v Vaughn*, 186 Mich App 376, 379-380; 465 NW2d 365 (1990).

<sup>2</sup> MCR 2.613(C).

<sup>3</sup> *People v Nunez*, 242 Mich App 610, 615; 619 NW2d 550 (2000).

<sup>4</sup> *People v Fetterley*, 229 Mich App 511, 515; 583 NW2d 199 (1998).

<sup>5</sup> *People v Marji*, 180 Mich App 525, 542; 447 NW2d 835 (1989).

<sup>6</sup> *Vaughn*, *supra*; *Fetterley*, *supra*.

<sup>7</sup> *People v Hornsby*, 251 Mich App 462, 468; 650 NW2d 700 (2002).

## B. The Trial Court's Scoring

Scott argues that he is entitled to resentencing because the trial court's scoring of OV 15 at five points and OV 19 at ten points was erroneous. Scott preserved this issue by filing a motion to remand in this Court.<sup>8</sup> However, we conclude that the trial court correctly scored OV 15 at five points based on a finding that Scott was convicted of possession with intent to deliver an amount of a controlled substance that indicated an intent to engage in narcotics trafficking.<sup>9</sup> The trial court did not assess Scott points for a greater offense. Furthermore, the trial court did not abuse its discretion by scoring OV 19 at ten points based on a finding that he engaged in activity designed to hinder a police investigation, that is, placing the bag in the closet area in an attempt to conceal it.<sup>10</sup> We conclude that Scott is not entitled to resentencing.

Affirmed.

/s/ William C. Whitbeck

/s/ Kathleen Jansen

/s/ Richard A. Bandstra

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<sup>8</sup> MCL 769.34(10); *People v Kimble*, 470 Mich 305, 309-311; 684 NW2d 669 (2004).

<sup>9</sup> MCL 777.45(1)(e), now MCL 777.45(1)(g).

<sup>10</sup> *People v Barbee*, 470 Mich 283, 286-288; 681 NW2d 348 (2004).