STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED December 6, 2005
v	No. 255817 Wayne Circuit Court
FARRELL DEMAR HALL, Defendant-Appellant.	LC No. 03-008343-01

Before: Smolenski, P.J., and Schuette and Borrello, JJ.

PER CURIAM.

Following a bench trial, defendant was convicted of two counts of assault with intent to do great bodily harm less than murder, MCL 750.84, and one count of malicious destruction of personal property valued at $200 or more but less than $1,000, MCL 750.377a(c)(i). He was sentenced as an habitual offender, fourth offense, to concurrent prison terms of 76 months to 10 years for the assault convictions, and 41 days for the malicious destruction of property conviction. He appeals as of right. We affirm. This case is being decided without oral argument pursuant to MCR 7.214(E).

I. FACTS

The incident arises from a case of "road rage." Defendant alleges that as a result of a near collision between the complainant's vehicle, defendant's vehicle was forced up on the curb, where it sustained minor damage. Defendant then attacked complainant with a tree branch or stick. At one point in the struggle, defendant knocked the complainant down with a blow to the head. One witness "thought he was going to take the guy's head off,". When complainant got up and ran away, defendant gave chase. Witnesses reported hearing the defendant saying, "'You're dead. You're going to be dead,' you know. 'Wherever you go, you're going to be dead today.'" Defendant pursued complainant into an office where he continued the attack. After leaving the office and the complainant, defendant broke out the windows in complainant's vehicle.

II. SUFFICIENCY OF EVIDENCE

Defendant argues that the evidence failed to support his assault convictions because there was insufficient evidence that he intended to seriously injure the complainant. We disagree.

A. Standard of Review

"[W]e review a challenge to the sufficiency of the evidence in a bench trial de novo and in a light most favorable to the prosecution to determine whether the trial court could have found that the essential elements of the crime were proved beyond a reasonable doubt." *People v Sherman-Huffman*, 241 Mich App 264, 265; 615 NW2d 776 (2000), aff'd 466 Mich 39 (2002).

B. Analysis

The elements of assault with intent to do great bodily harm less than murder are: "(1) an attempt or threat with force or violence to do corporal harm to another (an assault), and (2) an intent to do great bodily harm less than murder." This Court has defined the intent to do great bodily harm as "an intent to do serious injury of an aggravated nature." [*People v Brown*, 267 Mich App 141, 147; 703 NW2d 230 (2005) (citations and emphasis omitted).] Viewed in a light most favorable to the prosecution, evidence that defendant initially choked the complainant, that he later attacked the complainant with a stick or tree branch by taking a "full swing" at his head in such a forceful manner that one witness "thought he was going to take the guy's head off," and that defendant told the complainant during the attacks that he was going to "F" him up and "You're dead," was sufficient to enable a rational trier of fact to find beyond a reasonable doubt that defendant intended to cause a serious injury of an aggravated nature. Accordingly, there was sufficient evidence to support defendant's assault convictions.

III. SCORING OF OFFENSE VARIABLE 7

Defendant next challenges the trial court's scoring of offense variable (OV) 7 of the sentencing guidelines. We find that OV 7 was properly scored.

A. Standard of Review

Generally, this Court reviews a scoring decision to determine whether the sentencing court properly exercised its discretion and whether the evidence adequately supported a particular score. *People v McLaughlin*, 258 Mich App 635, 671; 672 NW2d 860 (2003). A reviewing court will uphold a scoring decision for which there is any evidence in the record. *People v Hornsby*, 251 Mich App 462, 468; 650 NW2d 700 (2002).

B. Analysis

Offense variable 7 is scored at 50 points where "[a] victim was treated with sadism, torture, or excessive brutality or conduct designed to substantially increase the fear and anxiety a victim suffered during the offense." MCL 777.37(a). The evidence showed that defendant physically assaulted the complainant by punching him and then choking him, that defendant then obtained a stick or tree branch and struck the complainant with it while the complainant was fleeing, that defendant followed the complainant into an office and continued to assault the complainant with the stick, and that, during the pursuit, defendant told the complainant, "Wherever you go, you're going to be dead today." This evidence is sufficient to establish that defendant engaged in "conduct designed to substantially increase the fear and anxiety the victim suffered during the offense." Thus, the evidence supports the trial court's score of 50 points for offense variable 7.

IV. DISPROPORTIONAL SENTENCE

Finally, defendant argues that his sentence is disproportionate. We disagree.

A. Standard of Review

When a defendant's minimum sentence is within the sentencing guidelines range, this Court must affirm the sentence unless the trial court erred in scoring the guidelines or relied on inaccurate information. MCL 769.34(10); *McLaughlin*, *supra* at 670.

B. Analysis

Defendant does not argue that the court relied on inaccurate information. Further, because we have rejected defendant's scoring challenge to offense variable 7, defendant has not established a scoring error. Thus, defendant's proportionality argument is outside the limited scope of review provided by MCL 769.34(10), and we must affirm his sentence. *McLaughlin*, *supra* at 671.

Affirmed.

/s/ Michael R. Smolenski
/s/ Bill Schuette
/s/ Stephen L. Borrello