

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

PHILANDO SLAUGHTER,

Defendant-Appellant.

UNPUBLISHED

October 23, 2007

No. 273787

Saginaw Circuit Court

LC No. 05-026111-FC

Before: Owens, P.J., and Bandstra and Davis, JJ.

PER CURIAM.

Defendant appeals by delayed leave granted from his plea-based convictions of, and sentences for, third-degree fleeing and eluding a police officer, MCL 750.479a(3), and unlawfully driving away a motor vehicle, MCL 750.413, for which the trial court sentenced defendant, as a habitual offender fourth, MCL 769.12, to serve concurrent terms of imprisonment of 46 months to 25 years for each count. On appeal, defendant argues that he should be allowed to withdraw his plea and proceed to trial, on the ground that the trial court coerced him to accept the plea agreement, and, alternatively, that the trial court erred in the scoring of two sentencing variables. We affirm.

I. Facts

On the day set for trial of this matter, the prosecutor informed the trial court that defendant was charged with carjacking and fleeing and eluding, reminded the court that carjacking exposed defendant to consecutive sentencing, and stated that an agreement had been offered according to which defendant would plead guilty to unauthorized driving away and fleeing and eluding, which would guarantee concurrent sentencing, and, considering defendant's habitual-offender status, bring a range for defendant's minimum sentence under the sentencing guidelines of seven to forty-six months' imprisonment. The prosecutor further reported that defendant had rejected the offer and intended to proceed to trial.

Defense counsel stated on the record that he had advised defendant to accept the plea offer, which defendant acknowledged while reiterating that he wished to go to trial. The prosecutor reported that the range for carjacking would be eighty-one to two hundred seventy months, and that he would be seeking a sentence at the top of that range. The trial court advised

defendant that his habitual-fourth status would normally bring a minimum sentence at the high end of the guidelines range, and reminded defendant that the sentencing implications under the plea agreement were much milder than what he faced if convicted of carjacking. Defense counsel in turn conceded that there was no defense to the fleeing and eluding charge. The trial court reiterated that the lack of a defense in that regard exposed defendant to a sentencing range equal to what awaited in the plea proposal even if he won acquittal of the carjacking charge at trial. Defendant eventually relented and agreed to accept the plea bargain.

Defendant then admitted that, on April 10, 2005, he arranged to borrow a car for a limited time, but did not return it as promised. Defendant further admitted that early the next morning the State Police attempted to stop his vehicle, but that because he was driving without a license he attempted to flee, inducing the police to chase him through the city of Saginaw with sirens and lights engaged, which ended when a police car struck defendant's vehicle. Defendant additionally confirmed that he had sufficient earlier convictions to have earned the offender status of habitual fourth.

I. Plea Proceeding

Defendant argues that the trial court failed to remain impartial, and otherwise improperly injected himself personally, in encouraging defendant to accept the plea agreement.

A trial court's general conduct of trial is reviewed for an abuse of discretion. See *People v Ramano*, 181 Mich App 204, 220; 448 NW2d 795 (1989). An abuse of discretion occurs where the trial court chooses an outcome falling outside a "principled range of outcomes." *People v Babcock*, 469 Mich 247, 269; 666 NW2d 231 (2003). A trial judge must act as a neutral and detached judicial officer. See *Cain v Dep't of Corrections*, 451 Mich 470, 509; 548 NW2d 210 (1996). If a trial judge's conduct pierces the veil of judicial impartiality, a defendant's conviction must be reversed. *Ramano, supra*, quoting *People v Collier*, 168 Mich App 687, 698; 425 NW2d 118 (1988).

We have reviewed the transcript, and conclude that the trial court's remarks in encouraging defendant not lightly to eschew the opportunity that the plea agreement provided reveal neither bias, nor undue coercive pressure, on the part of the court. Instead, we find a display of sincere concern that defendant did not fully appreciate that he had nothing to gain, but much to lose, from going to trial.

The trial court did not personally evaluate, then disparage, defendant's chances of winning acquittal of the fleeing and eluding charge. Instead, both defendant and his attorney stated frankly that they had no defense to it. The trial court's acknowledgement of that lack of defense was thus merely responsive, and deferential, to defendant's own position.

As the parties and court acknowledged, were defendant convicted of carjacking, his guidelines range would have been much higher than what he faced for fleeing and eluding. Moreover, sentences for carjacking may be made to run consecutively to other sentences stemming from the same incident. MCL 750.529a(3).

Any coercive pressure defendant may have felt in the matter originated with the facts of the case, not from the trial court's attempts to ensure that defendant understood them. The judge showed himself to be a friend of justice, and of defendant, in ensuring that defendant was fully able to calibrate his self-interest in deciding whether to offer a plea or stand on his rights.

For these reasons, defendant's argument that the trial court coerced his plea must fail.

III. Sentencing

Defendant argues that the trial court failed to resolve satisfactorily a dispute he had with information contained within his PSIR, and how the latter affected his guidelines' scoring. In particular, at sentencing, defendant objected to the scoring of offense variables (OV) 1 and 2, which were scored to reflect that defendant used a firearm in connection with the sentencing offense. OV 1 was scored at fifteen, and OV 2 at five.

Subsection (1)(c) of MCL 777.31, which concerns aggravated use of a weapon, directs a sentencing court to assess fifteen points for OV 1 if a "firearm was pointed at or toward a victim" Subsection (1)(d) of MCL 777.32, which concerns the lethal potential of the weaponry involved, directs a sentencing court to assess five points for OV 2 if the offender "possessed or used a pistol"

At sentencing, the defense protested that defendant never had a weapon on the occasion in question. The prosecutor replied that the victim reported that defendant had produced a handgun while taking the automobile, and the trial court noted that the presentence investigation report (PSIR) included a statement to that effect. The court stated, "I'll put defendant disputes this. . . . I've so noted, but I'll decline changing the guidelines."

Defendant quotes discussions later in the sentencing proceeding in which the court suggested that it would review some matter and possibly revisit it, thus suggesting that the court was referring to the dispute over whether defendant had used a gun. But the transcript makes plain that the court was referring to a different matter. There was in fact no further discussion concerning the scoring of OVs 1 and 2.

"If any information in the presentence report is challenged, the court must allow the parties to be heard regarding the challenge, and make a finding with respect to the challenge or determine that a finding is unnecessary because it will not take the challenged information into account in sentencing." MCR 6.425(E)(2). In this case, despite defendant's attempt to characterize the trial court as having left unresolved the dispute over whether the sentencing offenses involved a firearm, it is apparent from the transcript that the court in fact simply resolved that issue in favor of the prosecution.

A scoring decision will not be reversed if any evidence exists to support the score. *People v Hornsby*, 251 Mich App 462, 468; 650 NW2d 700 (2002). Information relied upon for purposes of sentencing may come from several sources, including a PSIR. *People v Potrafka*, 140 Mich App 749, 751-752; 366 NW2d 35 (1985). In this case, the agent's description of the offense in defendant's PSIR includes that "the defendant pulled out a handgun from under his shirt and ordered [the victim] out of the vehicle." The trial court thus had a sufficient evidentiary

basis for scoring OVs 1 and 2 to reflect that defendant produced a firearm when committing his crimes.

For these reasons, defendant's sentencing challenges must fail.

We affirm.

/s/ Donald S. Owens
/s/ Richard A. Bandstra
/s/ Alton T. Davis