

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ERIC EUAGEAN WARREN,

Defendant-Appellant.

UNPUBLISHED

May 8, 2008

No. 277154

Oakland Circuit Court

LC No. 2006-211772-FH

Before: Kelly, P.J., and Owens and Schuette, JJ.

PER CURIAM.

Defendant was found guilty by a jury of unarmed robbery, MCL 750.530, and was sentenced as a second felony offender, MCL 769.10, to 5 to 22½ years' imprisonment. He appeals as of right. We affirm. We decide this appeal without oral argument under MCR 7.214(E).

I. FACTS

On August 24, 2006, the Wixom police were summoned to an apartment complex in response to a robbery complaint. When the police arrived at the apartment complex, they saw the victim bleeding from a head wound. The officers summoned an ambulance.

The victim said¹ he had been robbed and beaten by a group of men and that the men went into his friend Amanda's apartment. The Wixom police call for backup from the Oakland County Sheriff's Department. After waiting for a sufficient force to arrive, the police illuminated the apartment with floodlights and called several times for the occupants of Amanda's apartment to come out. It took some time for everyone to exit the apartment, and the officers were informed that defendant was hiding in the apartment. The officers went into the apartment and arrested defendant. The victim identified defendant at the scene as the man who had hit him on the head and robbed him.

¹ The victim did not speak English, so a friend translated for him.

On appeal, defendant raises several constitutional and statutory claims concerning his sentence and the scoring of the sentencing guidelines. He urges that Offense Variables (OV) 1, 2, 3, and 19 were improperly scored. We disagree.

II. STANDARD OF REVIEW

Defendant failed to raise his arguments at the sentencing hearing, in a proper motion for resentencing, or in a proper motion for remand addressed to the Court. MCL 769.34(10). Therefore, defendant's claims are not properly preserved, and we review them for plain error affecting his substantial rights. *People v Kimble*, 470 Mich 305, 312; 684 NW2d 669 (2004).

III. ANALYSIS

First, we reject defendant's argument that judicial fact finding in the sentencing process violated his Sixth Amendment rights. *People v Drohan*, 475 Mich 140, 161-164; 715 NW2d 778 (2006).

Scoring of the sentencing guidelines must be affirmed when there is any evidence to support the score. *People v Hernandez*, 443 Mich 1, 16; 503 NW2d 629 (1993); *People v Endres*, 269 Mich App 414, 417; 711 NW2d 398 (2006).

Ten points are to be scored for OV 1 when "[t]he victim was touched by any other type of weapon." MCL 777.31(1)(d). Here, the presentence report and the preliminary examination record both indicate the victim was struck on the head with a gun or some other hard object. The victim testified at trial that defendant struck him with a very hard blow to the top of his head, rendering him unconscious and bleeding. Photographs admitted into evidence showed that the victim's injuries were not consistent with being struck with just a fist. Under these circumstances, we find that the scoring of OV 1 was proper. For the same reasons, OV 2 was properly scored at 1 point, reflecting the use of a potentially lethal weapon. MCL 777.32(1)(e).

OV 3 is to be scored 10 points when there is "[b]odily injury requiring medical treatment ... to a victim." MCL 777.33(1)(d). It is enough if medical treatment was necessary even though the victim may not have actually received such treatment. MCL 777.33(3). Here, the victim was rendered unconscious and bleeding from a serious head wound inflicted by defendant. The police officers who first arrived at the scene and saw the victim summoned an ambulance for him because of the apparent severity of his injuries. Thus, although the victim did not obtain medical treatment, we conclude the scoring of 10 points for OV 3 was proper.

Further, the trial court did not err in scoring 10 points for OV 19 because the evidence at trial showed that defendant attempted to elude the police by fleeing to and hiding in a nearby apartment. MCL 777.49(c); *People v Barbee*, 470 Mich 283, 286-287; 681 NW2d 348 (2004).

Defendant also argues that the trial court did not give sufficient reasons for imposing a 5 to 22½-year sentence and that the sentence constitutes cruel and unusual punishment, US Const, Am VIII; Const 1963, art I, § 16.

At the sentencing hearing, the trial court noted that defendant was 25 years old, was employed, and had a GED. But the court also noted that defendant had five prior felonies, three

prior misdemeanors, and was on bond for drug delivery charges when this offense occurred. The court indicated its belief that defendant had lied during his testimony at trial. The court acknowledged that the sentencing guidelines provided for a minimum sentence of from 29 to 71 months. Clearly, the court gave sufficient reasons for imposing an enhanced sentence of 5 to 22½ years' imprisonment. *People v Triplett*, 432 Mich 568, 573; 442 NW2d 622 (1989).

Therefore, because defendant's sentence is within the guidelines' recommended minimum range of 29 to 71 months and because there were no errors in the scoring of the sentencing guidelines, defendant's sentence must be affirmed. MCL 769.34(10); *People v Babcock*, 469 Mich 247, 272; 666 NW2d 231 (2003). Further, the sentence is not constitutionally excessive so as to constitute cruel or unusual punishment. *People v Colon*, 250 Mich App 59, 66; 644 NW2d 790 (2002) (holding that a proportionate sentence is not cruel and unusual punishment).

Finally, because there are no errors requiring resentencing, we further hold that defendant was not denied the effective assistance of counsel. *People v Pickens*, 446 Mich 298, 312; 521 NW2d 797 (1994).

Affirmed.

/s/ Kirsten Frank Kelly

/s/ Donald S. Owens

/s/ Bill Schuette