

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ANTHONY LITTLE HAMBLIN,

Defendant-Appellant.

UNPUBLISHED

May 13, 2008

No. 277833

Calhoun Circuit Court

LC No. 06-001931-FH

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

PER CURIAM.

Defendant pleaded no contest to one count of felonious assault, MCL 750.82, for which the trial court sentenced him, as a second habitual offender, MCL 769.10, to serve a term of imprisonment of three to six years. We affirm. We decide this case without oral argument under MCR 7.214(E).

I. FACTS

The victim, who had formerly dated defendant, testified at the preliminary examination that defendant appeared unexpectedly at her residence, and after a few hours of benign conversation, asked her to give him money. According to the victim, defendant became enraged, threatened her, and struck her repeatedly in the face, inducing heavy bleeding. She stated that she repeatedly tried to run from defendant, but that defendant held her back. She added that defendant forced her to take a bath to clean up the blood, and he threw her cell phone into the bath water. The victim recounted that the ordeal “seemed like it was goin’ forever,” and “was traumatic to me.”

At sentencing, the trial court rebuffed defendant’s objections to scoring ten points for offense variable (OV) 4 as follows:

[T]he . . . point . . . is whether from all the circumstances it seems reasonably likely that there was a psychological injury. It’s not merely a speculation in the sense that there’s no particular reason to believe that, you know, somebody was shocked at something they saw and, therefore, they’re going to perhaps need medical help in the sense of psychiatric help or counseling or something. The circumstances here are, however, much different than that kind of speculative situation. This is an ongoing thing that occurs over a period of time

under extreme circumstances that it would seem to me to lead to the reasonable conclusion that the victim could reasonably be expected under these circumstances that there be some psychological trauma and I guess the question is whether you're—when we score points, are we scoring them because we're concerned about the victim paying for something or are we scoring them because of the nature of the damage done and it seems to me it's more the nature of the damage done and under the circumstances of this case, I think it's appropriate to score the points

Challenging the scoring of OV 4, defendant unsuccessfully sought delayed leave to appeal to this Court, and then sought leave from our Supreme Court. In lieu of granting leave, the Supreme Court remanded this case to this Court for consideration, as on leave granted, “whether the trial court erred in scoring 10 points for serious psychological injury under MCL 777.34(1)(a).” *People v Hamblin*, 477 Mich 1129; 730 NW2d 471 (2007). The Court otherwise denied leave.

Justice Corrigan, concurring in the decision to remand, opined as follows:

Ten points should be scored for offense variable (OV) 4, under MCL 777.34(1)(a), if a victim suffers “serious psychological injury” that “may require professional treatment.” MCL 777.34(2). “[T]he fact that treatment has not been sought is not conclusive.” MCL 777.34(2). I note *People v Apgar*, 264 Mich App 321, 329; 690 NW2d 312 (2004), in which the Court of Appeals stressed that the victim need not actually receive treatment for purposes of OV 4. There, the ten-point score for OV 4 was supported by the victim’s testimony that she was “fearful” during the encounter. *Id.* Here, at the preliminary examination, the victim attested that defendant’s behavior “was traumatic to me.” The record also reveals apparent domestic violence in the course of defendant’s relationship with the victim, as is evident in the circumstances of the offense. Accordingly, I would request that, on remand, the Court of Appeals address *Apgar* in its opinion. [*Id.* (Corrigan, J., concurring).]

II. STANDARD OF REVIEW

“This Court reviews a sentencing court’s scoring decision to determine whether the trial court properly exercised its discretion and whether the record evidence adequately supports a particular score.” *People v McLaughlin*, 258 Mich App 635, 671; 672 NW2d 860 (2003). However, to the extent that a scoring issue calls for statutory interpretation, review is de novo. *Id.*

III. ANALYSIS

At issue in this case is OV 4, which, again, covers psychological injury to the victim. The trial court assessed ten points, which MCL 777.34(1)(a) prescribes where the victim suffered “[s]erious psychological injury requiring professional treatment” The statute advises, “Score 10 points if the serious psychological injury *may* require professional treatment,” adding

“the fact that treatment has not been sought is not conclusive.” MCL 777.34(2) (emphasis added).

This Court has held that the testimony of a victim of criminal sexual conduct that she was “fearful” during her encounter with the defendant was sufficient to support the decision to assess ten points for OV 4. *Apgar, supra* at 329. In this case, the victim described her encounter with defendant as “traumatic,” and seemingly endless, as well as bloody and violent. 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). In light of the victim’s testimony at the preliminary examination, the trial court in this instance had a sound basis for concluding that the victim suffered serious psychological injury for purposes of scoring ten points for OV 4.

Affirmed.

/s/ Kirsten Frank Kelly

/s/ Donald S. Owens

/s/ Bill Schuette