

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

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

BRADLEY STEVEN CAREY,

Defendant-Appellant.

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UNPUBLISHED

June 3, 2008

No. 277902

Oakland Circuit Court

LC No. 2006-209811-FC

Before: Davis, P.J., and Murray and Beckering, JJ.

PER CURIAM.

Defendant claims an appeal from his sentences of ten to 20 years in prison imposed on his jury convictions of armed robbery, MCL 750.529, and bank robbery, MCL 750.531. We affirm.

The statutory sentencing guidelines recommended a minimum term range of 81 to 135 months for defendant's conviction of armed robbery.<sup>1</sup> At sentencing, defendant objected to the scoring of Offense Variable (OV) 9, MCL 777.39, number of victims, at ten points on the ground that no person except the bank teller from whom defendant demanded money was placed in danger, and to the scoring of OV 13, MCL 777.43, continuing pattern of criminal behavior, at 25 points, on the ground that the sentencing offense was not part of a "pattern of felonious criminal activity involving 3 or more crimes against a person." MCL 777.43(1)(b). The trial court rejected defendant's challenge to the scoring of OV 9, reasoning that several bystanders who were present when defendant robbed the bank were also placed in danger by defendant's actions. The trial court rejected defendant's challenge to the scoring of OV 13, finding that the crime of felonious assault, MCL 750.82, committed by defendant when he was arrested for the sentencing offenses, comprised the third offense against a person committed by defendant within a five-year

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<sup>1</sup> MCL 777.62. Both armed robbery and bank robbery are classified as a crime against a person, and each is punishable by life or a term of years. However, armed robbery is a Class A offense, while bank robbery is a Class C offense. Thus, armed robbery is considered to be the more serious of the offenses. The guidelines, as scored by the trial court, recommended a minimum term range of 19 to 38 months for defendant's conviction of bank robbery. MCL 777.64.

period. The trial court sentenced defendant to concurrent terms of ten to 20 years in prison, with credit for 290 days.

The proper interpretation and application of the sentencing guidelines are legal questions that we review de novo. *People v Morson*, 471 Mich 248, 255; 685 NW2d 203 (2004).

In calculating the sentencing guidelines the trial court has discretion to determine the number of points to be scored, provided that evidence in the record supports a particular score. A scoring decision for which there is any evidence in the record will be upheld. *People v Hornsby*, 251 Mich App 462, 468; 650 NW2d 700 (2002). We review a trial court's scoring of the guidelines to determine whether that court properly exercised its discretion and whether the evidence supports the scoring decisions. We review the trial court's findings of fact for clear error. *People v Houston*, 261 Mich App 463, 471; 683 NW2d 192 (2004), *aff'd* 473 Mich 399 (2005).

OV 9 is properly scored at ten points if two to nine victims were "placed in danger of physical injury or death . . ." MCL 777.39(1)(c). Each person placed in such danger is to be counted as a victim. MCL 777.39(2)(a).<sup>2</sup>

OV 13 is properly scored at 25 points if the sentencing offense was part of a pattern of criminal behavior involving three or more offenses against a person. MCL 777.43(1)(b). For purposes of determining the appropriate score for OV 13, "all crimes within a 5-year period, including the sentencing offense, shall be counted regardless of whether the offense resulted in a conviction." MCL 777.43(2)(a). For OV 13 to be scored at 25 points, the other offenses must have occurred within the same five-year period as the sentencing offense. *People v Francisco*, 474 Mich 82, 88; 711 NW2d 44 (2006).

Defendant argues that he is entitled to resentencing because the trial court abused its discretion by scoring OV 9 at ten points and OV 13 at 25 points. Regarding OV 9, defendant asserts that only one person, the bank teller, was placed in danger by his actions. Regarding OV 13, defendant notes that one conviction counted by the trial court occurred after the instant sentencing offenses, and contends that in light of the holding in *Francisco, supra*, a reasonable interpretation of MCL 777.43(2)(a) is that the Legislature intended that the relevant five-year period be that immediately preceding the date of the commission of the sentencing offense.

We affirm defendant's sentences. Surveillance photographs show clearly that three bystanders were in the immediate area when defendant committed the bank robbery. Defendant told the teller that he had a gun and a bomb, and demanded money. The teller took steps to notify the police, and gave defendant some money. Defendant left the bank before the police arrived. However, had the police arrived while the robbery was ongoing, the bystanders could have been subject to injury or death. Under the circumstances, the trial court did not abuse its

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<sup>2</sup> 2006 PA 548, effective March 30, 2007, amended MCL 777.39(2)(a) to provide that "each person who was placed in danger of physical injury or loss of life or property" is to be counted as a victim.

discretion by scoring OV 9 at ten points. See *People v Day*, 169 Mich App 516, 517; 426 NW2d 415 (1988) (considering a similar issue under the prior judicial sentencing guidelines).

The three offenses considered for the purpose of scoring OV 13 at 25 points were the armed robbery, the bank robbery, and a felonious assault that took place six months after the sentencing offenses occurred when the police arrived at defendant's residence to arrest defendant for the sentencing offenses. The plain language of MCL 777.43(2)(a) does not preclude consideration of a five-year period that encompasses the sentencing offense and an offense or offenses that occurred subsequently. See, e.g., *People v Petty*, 469 Mich 108, 114; 665 NW2d 443 (2003). The offenses considered by the trial court were three offenses against a person, and occurred within a five-year period that encompassed the sentencing offense. *Francisco*, *supra* at 88. The trial court did not abuse its discretion by scoring OV 13 at 25 points.

The minimum terms imposed by the trial court were within the guidelines as properly scored by the trial court. Defendant is not entitled to resentencing.

Affirmed.

/s/ Alton T. Davis  
/s/ Christopher M. Murray  
/s/ Jane M. Beckering