

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

CHARLES LEE WIDEMAN,

Defendant-Appellant.

UNPUBLISHED

July 8, 2008

No. 277815

Wayne Circuit Court

LC No. 04-004108-01

Before: Meter, P.J., and Smolenski and Servitto, JJ.

PER CURIAM.

Defendant was convicted by a jury of armed robbery, MCL 750.529, assault with intent to do great bodily harm less than murder, MCL 750.84, felon in possession of a firearm, MCL 750.224f, and possession of a firearm during the commission of a felony, MCL 750.227b.¹ The trial court sentenced defendant as a fourth habitual offender, MCL 769.12, prison terms of 50 to 100 years for armed robbery, life for assault with intent to do great bodily harm less than murder, 40 months to five years for felon in possession of a firearm, and five years for felony-firearm. This Court affirmed defendant's convictions, but remanded for resentencing on the armed robbery and assault with intent to do great bodily harm less than murder convictions. *People v Wideman*, unpublished opinion of the Court of Appeals, issued February 23, 2006 (Docket No. 257143). On remand, defendant was sentenced to 50 to 100 years for armed robbery and 152 to 300 months for assault. Defendant now appeals these sentences by right. We affirm.

The following excerpt was contained in this Court's initial opinion:

On February 27, 2004, James Wallace drove to a restaurant in Detroit. Beth Brantley accompanied Wallace. Wallace parked his vehicle in front of the restaurant. On her way into the restaurant, Brantley noticed Wideman standing near the corner of the building, talking on a telephone. Wideman asked her the time. Brantley told Wideman that it was 7:05 p.m., and continued to enter the restaurant. As Wallace exited his vehicle, Wideman approached him, grabbed his arm, and placed a gun in his stomach. Wideman demanded that Wallace give him

¹ Defendant was acquitted of the greater offense of assault with intent to commit murder.

money and told Wallace that, “[he knew] what this [was] about.” Wideman pinned Wallace down and began to pat him down. Wallace was able to retrieve a change purse from his right pocket and told Wideman to “take it.” Wallace’s change purse contained approximately \$12. Wideman took the money, told Wallace, “I ought to kill you,” and fired the gun at Wallace, shooting him in the right leg. Wideman then turned and ran away. [*Wideman*, slip op at 1-2].

Defendant first argues that the trial court misscored Offense Variable (OV) 3 (degree of physical injury to a victim), and OV 9 (number of victims). We disagree.²

We review a trial court’s scoring of a sentencing variable for an abuse of discretion and to determine whether the evidence of record supports the assigned score. *People v Hornsby*, 251 Mich App 462, 468; 650 NW2d 700 (2002). “Scoring decisions for which there is any evidence in support will be upheld.” *Id.* (citation omitted).

Offense Variable 3 is scored at 25 points when “life threatening or permanent incapacitating injury occurred to a victim” MCL 777.33(1)(c). Defendant argues that the single injury to the Wallace’s right thigh did not rise to this level of injury. However, while the bullet did not strike major arteries, veins, or bones, the physician who treated Wallace testified that Wallace complained of weakness and numbness in his leg. The physician also testified that Wallace’s leg could have “bled out” absent medical care. In a victim impact statement in the presentence investigation report, Wallace claimed that he had to continue to see a doctor on a monthly basis for the injury, and that he was losing feeling in his right foot. Wallace also stated in a letter to the court prior to the initial sentencing that the wound had “permanently damaged” his “good leg”³ by severing several tendons. This prevented him from maintaining the employment he had had for years. He also contended that his leg “swells everyday” and caused “constant pain.” The trial court’s scoring of OV 3 at 25 points is supported by the evidence.

Defendant also argues that the trial court erred when it scored OV 9 at ten points for two victims, MCL 777.39(1)(c), because Wallace was the sole focus of the attack.⁴ Each person placed in danger of physical injury or loss of life is to be counted as a victim. MCL 777.39(2)(a). Brantley kept walking after she spoke with defendant. However, she had not reached the end of

² Although the prosecution characterizes defendant’s arguments as being premised on *Blakely v Washington*, 542 US 296; 124 S Ct 2531; 159 L Ed 2d 403 (2004), defendant does not rely upon *Blakely* and, in fact, acknowledged in his brief that *Blakely* does not apply to Michigan’s sentencing scheme.

³ Wallace’s left leg had been severely injured prior to this incident.

⁴ Defendant did not object on this ground during resentencing. A party shall not raise on appeal an issue challenging the scoring of the sentencing guidelines unless the party has raised the issue at sentencing, in a proper motion for resentencing, or in a proper motion to remand filed in the court of appeals. MCL 769.34(10); *People v Kimble*, 470 Mich 305, 309; 684 NW2d 669 (2004). However, plain error in the scoring of the guidelines can be raised and corrected on appeal where the error results in a sentence outside the appropriate guidelines range. *Id.* at 312.

the building when she heard defendant attack Wallace, and turned around. She stated that she was 15 to 18 feet from the pair as they struggled, and as defendant shot Wallace. While Wallace may have been the focus of defendant's attack, Brantley's close proximity during the robbery and shooting placed her in danger of physical injury where defendant used a projectile weapon. The trial court did not clearly err when scoring OV 9 at ten points.

Defendant also argues that the trial court abused its discretion when it resentenced him to 50 to 100 years for armed robbery. He maintains that the imposition of the same sentence on remand suggests that the trial court did not recognize its discretion, and simply blindly relied upon the previously imposed sentence. We disagree.

MCL 769.34(10) states, "[i]f a minimum sentence is within the appropriate guidelines sentence range, the court of appeals shall affirm that sentence and shall not remand for resentencing absent an error in scoring the sentencing guidelines or inaccurate information relied upon in determining the defendant's sentence." "In other words, if a minimum sentence falls within the appropriate guidelines range, a defendant is not entitled to be resentenced unless there has been a scoring error or inaccurate information has been relied upon." *People v Francisco*, 474 Mich 82, 88; 711 NW2d 44 (2006). Defendant's calculated prior record variable score was 77 points. His correct OV score was 90 points. This provided a minimum sentence range of from 225 to 750 months (18.75 to 62.5 years), or life, for a FV grid for this Class A offense. MCL 777.62. The trial court's sentence of 50 to 100 years was within the guidelines. Defendant has not shown that he is entitled to resentencing.

Moreover, we find that defendant's assertion is incorrect. When discussing this sentence, and the remand, the trial court acknowledged the calculated sentence range for this offense, noted that the guidelines had not changed, and stated that the sentence initially imposed by the trial court was within the guidelines. It then found the initial sentence appropriate. The trial court also acknowledged this Court's previous holding that it could, instead, sentence defendant to life in prison for this offense. The trial court's statements demonstrate that it did not simply blindly "echo" the previous sentencing decision.

Affirmed.

/s/ Patrick M. Meter
/s/ Michael R. Smolenski
/s/ Deborah A. Servitto