

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

GEORGE EDWARD BRUMMELL,

Defendant-Appellant.

UNPUBLISHED

October 7, 2008

No. 279769

Oakland Circuit Court

LC No. 2007-213904-FH

Before: O’Connell, P.J., and Smolenski and Gleicher, JJ.

PER CURIAM.

Defendant appeals as of right his sentence of twenty-four to forty-eight months’ imprisonment for his conviction of domestic violence, third offense, MCL 750.81(4), which was entered after a jury trial. Because we conclude that there were no sentencing errors warranting relief, we affirm. This appeal has been decided without oral argument under MCR 7.214(E).

Defendant first argues that the trial court erred in scoring Prior Record Variable (PRV) 5 at ten points because there was insufficient evidence of three misdemeanor convictions applicable under MCL 777.55. We disagree.

The interpretation and application of the sentencing guidelines present questions of law subject to de novo review on appeal. *People v Cannon*, 481 Mich 152, 156; 749 NW2d 257 (2008). Defendant contends that his Akron, Ohio, convictions of resisting arrest and damaging and endangering do not fit the category of a crime against a person or property, as required under MCL 777.55(2). However, the prosecutor presented police reports which established that the conviction for resisting arrest was based on defendant’s struggle with police officers, and the conviction for damaging and endangering was based on defendant’s action of cutting the victim’s car tire. At the trial court hearing on defendant’s motion for resentencing pursuant to this Court’s order of remand, defendant did not contest the information contained in the police reports.

Sentencing guidelines scoring decisions for which there is any supporting evidence will be upheld on appeal. *People v Watkins*, 209 Mich App 1, 5; 530 NW2d 111 (1995). We conclude that there was sufficient evidence that defendant’s convictions of resisting arrest and damaging and endangering qualify as crimes against persons or property and therefore were properly included in the scoring of PRV 5.

Next, defendant asserts that he was deprived of the effective assistance of counsel when his trial counsel failed to object to the scoring of PRV 5 at ten points. However, as previously discussed, the prosecutor presented sufficient evidence to establish that defendant's convictions of resisting arrest and damaging and endangering constitute crimes against persons or property and therefore were properly included in the scoring of PRV 5. Accordingly, any objection would have been futile. Counsel does not render ineffective assistance by failing to raise futile objections. *People v Ackerman*, 257 Mich App 434, 455; 669 NW2d 818 (2003).

Finally, defendant contends that trial court erred in assessing fifty points for Offense Variable (OV) 7. We again disagree.

Under MCL 777.37(1)(a), fifty points should be assessed for OV 7 when "[a] victim was treated with sadism, torture, or excessive brutality or conduct designed to substantially increase the fear and anxiety a victim suffered during the offense." The Legislature defined "sadism" as "conduct that subjects a victim to extreme or prolonged pain or humiliation and is inflicted to produce suffering or for the offender's gratification." MCL 777.37(3).

For purposes of OV 7, a showing of actual physical abuse is not required. A showing of emotional and psychological conduct subjecting the victim to extreme or prolonged humiliation will satisfy the variable. While humiliation may have a physical component, humiliation may be generated in the absence of physical abuse. *People v Mattoon*, 271 Mich App 275, 277-278; 721 NW2d 269 (2006).

There is ample evidence to support the trial court's assessment of fifty points for OV 7. The testimony at trial established that defendant repeatedly hit and kicked the complainant and pulled her hair. Defendant forced the complainant to kiss the shoes his ex-girlfriend was wearing. Defendant made the complainant remove her clothes "because [he] was going to fuck [her]," but then continued beating her. During the assault, seven or eight people were present, including defendant's ex-girlfriend.

Defendant called the father of the complainant's son and announced that he was "whooping her butt." Still naked, the complainant went outside in the winter cold to wait for her son's father to arrive. Defendant followed her and continued to intermittently beat her on her back and buttocks. As a result of the wait outside in the January weather, the complainant's "feet were froze."

The complainant testified that "she didn't feel like [a] human being" during the incident. The complainant further stated that she had felt "violated" and "humiliated." A police officer testified that when he arrived, the complainant was naked, crying, and had numerous red marks on her lower back and rear end.

Given these facts, the trial court did not err in finding that defendant intentionally engaged in a course of conduct which subjected the complainant to extreme or prolonged

humiliation. See *Mattoon, supra*. OV 7 was properly scored at fifty points.

Affirmed.

/s/ Peter D. O'Connell
/s/ Michael R. Smolenski
/s/ Elizabeth L. Gleicher