

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

AARON TODD BROWN,

Defendant-Appellant.

UNPUBLISHED

November 25, 2008

No. 280507

Genesee Circuit Court

LC No. 06-018123-FH

Before: Murphy, P.J., and Sawyer and Smolenski, JJ.

MEMORANDUM.

Defendant pleaded guilty to unarmed robbery, MCL 750.530, and the trial court sentenced him as a second habitual offender, MCL 769.10, to 107 months' to 22-½ years' imprisonment. Defendant now appeals his sentence as of right. Because we conclude that there were no errors warranting relief, we affirm. This appeal has been decided without oral argument under MCR 7.214(E).

As the factual basis for his plea, defendant admitted that he attempted to steal a bank bag of money from a bar. Defendant struggled with a female employee who tried to physically stop him from leaving the bar with the bag. Defendant pushed the employee several times to get away and a couple patrons came to the employee's assistance, tackling and subduing defendant in the parking lot. At sentencing, and in a motion for resentencing, defendant challenged his scores of five points for Offense Variable (OV) 10 (exploitation of a vulnerable victim) and fifteen points for OV 19 (interfering or attempting to interfere with the administration of justice using force or the threat of force). The trial court rejected the challenges at sentencing and denied the motion for resentencing. Defendant raises the same challenges in this appeal.

In its appellate brief, the prosecutor does not dispute that OV 10 was improperly scored because there was no evidence, other than the fact that defendant is male and the victim is female, that defendant exploited the vulnerability of the victim through his size or strength. The primary issue then is whether OV 19 was properly scored.

OV 19 is properly scored at fifteen points when the defendant "used force or the threat of force against another person or the property of another person to interfere with, attempt to interfere with, or that results in the interference with the administration of justice." MCL 777.49(b). In this case, the prosecutor argued below—and the sentencing court agreed—that, because defendant struggled with the bar employee in an attempt to get away, he interfered with

the administration of justice within the meaning of OV 19. MCL 764.16(a) permits “[a] private person may make an arrest ... [f]or a felony committed in the private person’s presence.” Hence, the bar employee had the statutory authority to arrest defendant because she witnessed him take the bank bag, stuff it in his pants, and try to walk out of the bar. Defendant then used force against the bar employee when she tried to prevent him from leaving the bar with the money. Under these circumstances, we conclude that there was adequate evidence to support the scoring of fifteen points for OV 19. See *People v Endres*, 269 Mich App 414, 417; 711 NW2d 398 (2006) (“Scoring decisions for which there is any evidence in support will be upheld.”). See also *People v Passage*, 277 Mich App 175, 179; 743 NW2d 746 (2007) (noting that interfering with a private person’s statutorily authorized attempt to arrest may serve as the underlying basis for scoring OV 19). Given our holding that the struggle with the bar employee supported the scoring decision, we need not address defendant’s additional argument that phone calls he made from jail, which were allegedly threatening, did not support the scoring of OV 19.

Although OV 10 was improperly scored, it is not necessary to remand for resentencing because, even without the five points for OV 10, defendant’s scoring grid and the resulting minimum sentence recommendation do not change. *People v Francisco*, 474 Mich 82, 89 n 8; 711 NW2d 44 (2006).

Affirmed.

/s/ William B. Murphy
/s/ David H. Sawyer
/s/ Michael R. Smolenski