

STATE OF MICHIGAN  
COURT OF APPEALS

---

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JACOB JOSEPH SUMMERVILLE,

Defendant-Appellant.

---

UNPUBLISHED

July 30, 2009

No. 285129

Muskegon Circuit Court

LC No. 04-049963-FH

Before: Fitzgerald, P.J., and Talbot and Shapiro, JJ.

SHAPIRO, J. (*concurring*).

I concur in the affirmance of defendant's conviction.

I write separately to address the fact that the record also contains what defendant styled as an in pro per motion for correction of his presentence report. This motion actually describes alleged errors in defendant's Michigan Department of Corrections (MDOC) parole guideline sheet, rather than his presentence report, and asserts that these errors resulted in defendant being denied parole even though he has completed his minimum sentence. The trial court properly found no error in the presentence report itself and did not address the claimed errors in the MDOC documents, noting its lack of jurisdiction over the MDOC.

A review of the defendant's trial court record does reveal that defendant's 3/11/08 Parole Guidelines Score Sheet and his 9/3/04 Parole Guidelines Data Entry Assessment contain what appear to be incorrect scorings that may have affected his parole eligibility. Specifically, the Parole Guidelines Scoresheet scores defendant's offense as involving the following aggravating conditions: "violence or cruelty beyond that necessary to commit the crime," "sexual offense or sexually assaultive behavior," "victim transported or held captive beyond that necessary to commit the crime," and involving "more than two victims." I can find no evidence in the presentence report nor anywhere else in the record to support these entries. In addition, the Parole Guideline Data Entry Assessment lists defendant's sentencing guidelines as 50 months to 100 months when, in fact, the trial court determined it to be 29 to 54 months.

This Court, like the trial court, however, does not have jurisdiction over the MDOC in the context of this case and so we cannot order correction of these apparent errors. Rather, any such relief must come through the grievance procedures set forth in MDOC Policy Directive 06.05.100, Parole Guidelines, p 2 ("[A] prisoner may challenge the calculation of his/her parole

guideline score, including the accuracy of the information used in calculating the score, by filing a grievance pursuant to PD 03.02.130 'Prisoner/Parolee Grievances'").

/s/ Douglas B. Shapiro