

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DARIO DENARD,

Defendant-Appellant.

UNPUBLISHED

September 29, 2009

No. 287472

Wayne Circuit Court

LC No. 08-002236-FC

Before: Murray, P.J., and Markey and Borrello, JJ.

MEMORANDUM.

Defendant was convicted, following a jury trial, of unarmed robbery, MCL 750.530, assault with a dangerous weapon, MCL 750.82, and domestic violence, MCL 750.81(2). The trial court sentenced defendant as a fourth habitual offender, MCL 769.12, to time served for the domestic violence conviction, and concurrent terms of imprisonment of 106 months to 15 years for the robbery conviction, and two to four years for the assault conviction. Defendant appeals as of right. We affirm.

The prosecutor's theory of the case was that, in the early morning hours of January 18, 2008, defendant approached the victim, whom he had earlier dated, while the victim was seated in her car, put a gun to her window, ordered her out of the car, repeatedly struck her, forcibly took her wallet, and threatened her life and those of her loved ones if she spoke to the police.

Defendant's sole issue on appeal is whether the trial court erred in assessing him ten points for offense variable (OV) 4, which MCL 777.34(2) prescribes where the victim suffered "serious psychological injury" that "may require professional treatment," adding, "that treatment has not been sought is not conclusive." Defendant argues that the trial court lacked evidence that the victim's expressed desire for counseling related to defendant's crimes.

A criminal defendant is entitled to be sentenced on the basis of accurate information. *People v Hoyt*, 185 Mich App 531, 533; 462 NW2d 793 (1990). The court may consider all the circumstances of the crime, as determined from various sources, including a presentence investigation report. *People v Potrafka*, 140 Mich App 749, 751-752; 366 NW2d 35 (1985).

In this case, while discussing OV 4, the prosecuting attorney asserted that the victim remained fearful of defendant, "sustained a serious psychological injury requiring . . . professional treatment," and suggested that the victim might explain why she had not in fact

received treatment. The court then asked the victim if it was true that she wanted psychological treatment, but could not afford it for want of insurance, and the victim answered affirmatively. Defendant argues that the victim's lack of elaboration leaves open the possibility that she wanted psychological treatment for reasons unrelated to defendant's assaultive conduct, and posits that the need really stemmed from romantic disappointment. We find this speculation unconvincing.

The context that brought about the victim's affirmative responses clearly established that at issue was psychological injury suffered from the crimes, including her continuing fear of defendant. Moreover, the presentence investigation report (PSIR) stated that the "victim told the police that she thought she was going to die" in the course of the crimes, and initially was "afraid to come to the police station." The PSIR thus confirms that the victim suffered the sort of psychological trauma one would expect from the assaultive conduct imposed upon her. It strains at credulity to suggest that any other source of psychological injury was within the victim's contemplation when she spoke to the sentencing court. Accordingly we reject this claim of error.

Affirmed.

/s/ Christopher M. Murray
/s/ Jane E. Markey
/s/ Stephen L. Borrello