

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

LISA ANN DOLPH-HOSTETTER,

Defendant-Appellant.

UNPUBLISHED

October 22, 2009

No. 284799

St. Joseph Circuit Court

LC No. 00-010340-FC

Before: Fort Hood, P.J., and Sawyer and Donofrio, JJ.

PER CURIAM.

Defendant appeals by right the sentence imposed on resentencing¹ for her jury trial conviction of second-degree murder, MCL 750.317. She was sentenced to 25 to 50 years in prison, with credit for 1,470 days. We affirm.

Defendant challenges the trial court's scoring of 25 points for Offense Variable (OV) 3 of the applicable judicial sentencing guidelines. She also maintains that the trial court should not have scored ten points for OV 9. Defendant maintains that as a result of this erroneous scoring, her sentence was disproportionate.

We generally review a sentence imposed under the former judicial sentencing guidelines for an abuse of discretion. See *People v Milbourn*, 435 Mich 630, 634; 461 NW2d 1 (1990). “[A] given sentence can be said to constitute an abuse of discretion if that sentence violates the principle of proportionality, which requires sentences imposed by the trial court to be proportionate to the seriousness of the circumstances surrounding the offense and the offender.” *Id.* at 636. The misscoring of sentencing variables under the judicial sentencing guidelines does not necessarily provide a claim that would justify remand. *People v Mitchell*, 454 Mich 145, 175, 177; 560 NW2d 600 (1997). “[A]pplication of the guidelines states a cognizable claim on

¹ Defendant was initially found guilty of second-degree murder and conspiracy to commit second-degree murder. However, this Court remanded for resentencing after it determined that defendant's conviction for conspiracy to commit second-degree murder must be vacated because no such crime exists, and that this affected the judicial guidelines scoring to an extent that necessitated resentencing. *People v Dolph-Hostetter*, unpublished per curiam opinion of the Court of Appeals, issued April 3, 2007 (Docket No. 262858).

appeal only where (1) a factual predicate is wholly unsupported, (2) a factual predicate is materially false, and (3) the sentence is disproportionate.” *Id.* at 177. See also *People v Raby*, 456 Mich 487, 496; 572 NW2d 644 (1998). We will uphold scoring decisions under the judicial sentencing guidelines if evidence exists in the record to support the score. *People v Hernandez*, 443 Mich 1, 16; 503 NW2d 629 (1993), abrogated on other grounds *People v Mitchell*, 454 Mich 145; 560 NW2d 600 (1997).

The judicial sentencing guidelines instructed a court to assess 25 points for OV 3 where there was “unpremeditated intent to kill; or intent to do great bodily harm; or creation of a very high risk of death or great bodily harm with knowledge that death or great bodily harm was the probable result.” Michigan Sentencing Guidelines (2d ed), p 77. Offense Variable 9 is scored at ten points when the defendant is a leader in a multiple offender situation. The instructions for this OV specifically state, “The entire criminal episode or situation should be taken into account in determining whether an offender is a leader.” *Id.* at 78.

The trial court found that, while defendant was not personally present at the murder, she shared the others’ intentions, and played a major role in the murder. The trial court did not err in scoring either of these variables. Carol Knepp was fatally shot while driving her car in St. Joseph County in February 1996. An investigation of the shooting resulted in the arrest of defendant, Ronald Hostetter (defendant’s husband), and Dale Alan Smith. Hostetter, who later pleaded guilty to second-degree murder, testified that he drove the car and that Smith was the shooter. Smith was convicted of first-degree murder. *People v Smith*, unpublished per curiam opinion of the Court of Appeals, issued May 22, 2003 (Docket No. 236863). Hostetter maintained during Smith’s trial that all three were involved in planning the murder. *Id.* During defendant’s trial, Hostetter also testified that defendant was adamant that the murder had to occur on the evening it occurred because Knepp’s work schedule had changed.

According to defendant’s Presentence Investigation Report (PSIR), Dale Smith told an investigating officer that defendant pointedly asked him if he would help kill Knepp and that both she and Ron came to his house to discuss plans for murdering Knepp. Smith told the author of the PSIR that defendant started by wanting to harm Knepp, but then wanted her dead. Defendant asked Smith repeatedly for help murdering Knepp, and “her intensity never diminished.” A PSIR is presumed to be accurate, and a trial court may rely upon the report unless effectively challenged by the defendant. *People v Callon*, 256 Mich App 312, 334; 662 NW2d 501 (2003). Defendant in this case reviewed the PSIR, made several objections to information contained in the report, and affirmatively expressed satisfaction with the rest of the PSIR. Defendant made no objections to the information now being challenged. We thus find that the trial court did not err when it scored OV 3 and OV 9. *Mitchell, supra* at 177.

Affirmed.

/s/ Karen M. Fort Hood
/s/ David H. Sawyer
/s/ Pat M. Donofrio