

STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ANTHONY DEWAYNE SMITH,

Defendant-Appellant.

UNPUBLISHED

August 24, 2010

No. 287474

Wayne Circuit Court

LC No. 08-004319-FH

Before: K.F. KELLY, P.J., and WILDER and GLEICHER, JJ.

PER CURIAM.

A jury convicted defendant of being a felon in possession of a firearm, MCL 750.224f, carrying a concealed weapon (CCW), MCL 750.227, and possession of a firearm during the commission of a felony (felony-firearm), MCL 750.227b. The trial court sentenced defendant as a third habitual offender, MCL 769.11, to concurrent terms of two to 10 years' imprisonment for the felon in possession and CCW convictions, and a consecutive two-year term for the felony-firearm conviction. We affirm, and decide this appeal without oral argument pursuant to MCR 7.214(E).

Defendant complains that the trial court erroneously scored offense variable (OV) 19 at 10 points, insisting that he did not interfere with the administration of justice until after the completion of the sentencing offenses. We review de novo “[t]he proper interpretation and application of the legislative sentencing guidelines.” *People v Cannon*, 481 Mich 152, 156; 749 NW2d 257 (2008). We review for an abuse of discretion a trial court’s discretionary determination concerning the calculation of a sentencing variable score. *People v Hornsby*, 251 Mich App 462, 468; 650 NW2d 700 (2002).

OV 19 directs a court to assess 10 points if “[t]he offender otherwise interfered with or attempted to interfere with the administration of justice.” MCL 777.49(c). The Michigan Supreme Court has explained that the plain language of MCL 777.49(c), specifically

the phrase “interfered with or attempted to interfere with the administration of justice” encompasses more than just the actual judicial process. Law enforcement officers are an integral component in the administration of justice, regardless of whether they are operating directly pursuant to a court order. . . .

The investigation of crime is critical to the administration of justice. Providing a false name to the police constitutes interference with the administration of justice, and OV 19 may be scored, when applicable, for this conduct. . . .

* * *

Conduct that occurs before criminal charges are filed can form the basis for interference, or attempted interference, with the administration of justice, and OV 19 may be scored for this conduct where applicable. . . . [*People v Barbee*, 470 Mich 283, 287-288; 681 NW2d 348 (2004).]

The Michigan Supreme Court has also cautioned that “[o]ffense variables must be scored giving consideration to the sentencing offense alone, unless otherwise provided in the particular variable.” *People v McGraw*, 484 Mich 120, 133; 771 NW2d 655 (2009) (analyzing the proper scoring of OV 9). Alternatively stated, “a defendant’s conduct after an offense is completed does not relate back to the sentencing offense for purposes of scoring offense variables unless a variable specifically instructs otherwise.” *Id.* at 122.

Because OV 19 does not specifically authorize courts to score the variable on the basis of conduct beyond the scope of the sentencing offense, a court may only premise its scoring of OV 9 on conduct that occurred before the offender completed the sentencing offense. In this case, evidence of record supported the trial court’s finding that defendant interfered with the administration of justice by fleeing from police officers *before* he had completed the sentencing offense of felon in possession of a firearm. Two police officers testified at defendant’s trial about their encounter with defendant on a March 2008 evening in Detroit. The officers recounted that during a routine patrol, they saw defendant and a companion, who looked like juveniles, walking around in violation of the city curfew. The officers described that when they began questioning defendant about his age, he removed a black revolver from a pocket of his clothing with his right hand, and alighted away from the officers on foot. One officer recalled that he pursued defendant on foot, ultimately catching defendant within a couple blocks, and that in the course of the chase defendant threw his revolver into the street.

The trial testimony reflects that defendant completed the sentencing offense, felon in possession of a firearm, when he relinquished physical possession of the revolver by casting it into the street during the chase. See *People v Burgenmeyer*, 461 Mich 431, 436-440; 606 NW2d 645 (2000) (“possession” for purposes of a possessory firearm offense continues while the defendant has “proximity and reasonable accessibility” to a weapon); *People v Owen*, 251 Mich App 76, 82-83; 649 NW2d 777 (2002) (“[A] defendant’s concealing or storing a stolen firearm . . . was a continuing offense as long as (the concealment or storage) existed.”) (internal quotation omitted). The trial testimony of the officers also establishes that defendant engaged in flight from the officers, an interference with the administration of justice, MCL 777.49(c); *Barbee*, 470 Mich at 288, *before* defendant had completed the charged felon in possession offense by discarding the revolver. Because ample evidence of record supported a finding that defendant interfered with the administration of justice in the course of the sentencing offense, we conclude

that the court properly scored 10 points for OV 19. *Hornsby*, 251 Mich App at 468; *People v Elliott*, 215 Mich App 259, 260; 544 NW2d 748 (1996) (“Scoring decisions for which there is any evidence in support will be upheld.”).

Affirmed.

/s/ Kirsten Frank Kelly
/s/ Kurtis T. Wilder
/s/ Elizabeth L. Gleicher