

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ANTON RAMONE BERRY,

Defendant-Appellant.

UNPUBLISHED

October 14, 2010

No. 293583

Oakland Circuit Court

LC No. 2009-225802-FH

Before: SAWYER, P.J., and FITZGERALD and SAAD, JJ.

PER CURIAM.

A jury convicted defendant of felon in possession of a firearm, MCL 750.224f, carrying a concealed weapon, MCL 750.227, and possession of a firearm during the commission of a felony, MCL 750.227b. The trial court sentenced defendant as an habitual offender, fourth offense, MCL 769.12, to concurrent prison terms of 58 months to 40 years each for the felon in possession and CCW convictions, and to a consecutive two-year term of imprisonment for the felony-firearm conviction. Defendant appeals as of right. We affirm. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

Defendant argues that the trial court erred in scoring 15 points for offense variable (“OV”) 1 and ten points for OV 9 of the sentencing guidelines. He contends that the trial court’s scoring decisions violate *People v McGraw*, 484 Mich 120; 771 NW2d 655 (2009), because the scores were based on conduct committed during a robbery, whereas the offense being scored was felon in possession of a firearm. We disagree.

This Court reviews de novo questions of law concerning the interpretation and application of the sentencing guidelines. *McGraw*, 484 Mich at 123. This Court reviews for clear error a trial court’s findings of fact at sentencing. *People v Osantowski*, 481 Mich 103, 111; 748 NW2d 799 (2008).

The trial court scored the sentencing information report for defendant’s conviction of felon in possession of a firearm, which is a public safety offense. MCL 777.16m. Both OV 1 and OV 9 are to be scored for all crimes against public safety. MCL 777.22(5). Fifteen points are to be scored for OV 1 if “[a] firearm was pointed at or toward a victim[.]” MCL 777.31(1)(c). The scoring of OV 9 is based on the number of victims. Ten points are to be scored if there were “2 to 9 victims who were placed in danger of physical injury or death[.]”

MCL 777.39(1)(c). A court is to “[c]ount each person who was placed in danger of physical injury or loss of life or property as a victim.” MCL 777.39(2)(a).

In *McGraw*, 484 Mich at 120, the Court held that “[o]ffense variables are properly scored by reference only to the sentencing offense except when the language of a particular offense variable statute specifically provides otherwise.” *Id.* at 135. The Court explained that “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. In the present case, the sentencing offense was felon in possession of a firearm. Contrary to what defendant argues, the trial court did not improperly score OV 1 and OV 9 on the basis of conduct committed before or after the sentencing offense was committed. Defendant’s possession of a firearm occurred continuously over a period of time, both inside and outside the restaurant. The evidence at trial indicated that defendant pointed firearms at three different persons during the time defendant was committing the possessory weapons offenses. Because a firearm was pointed at a victim, the trial court properly scored OV 1 at 15 points. Further, by pointing firearms at the three men, defendant placed each in danger of physical injury or death. Accordingly, the trial court properly scored OV 9 at ten points.

Affirmed.

/s/ David H. Sawyer
/s/ E. Thomas Fitzgerald
/s/ Henry William Saad