

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

EUGENE WILLIAMS,

Defendant-Appellant.

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UNPUBLISHED

October 26, 2010

No. 293250

Wayne Circuit Court

LC No. 09-003642-FC

Before: MURPHY, C.J., and BECKERING and M. J. KELLY, JJ.

PER CURIAM.

Defendant Eugene Williams appeals as of right the trial court's decision to sentence him to serve 25 to 50 years in prison for his bench trial conviction of assault with intent to commit murder. See MCL 750.83. Because we conclude that there were no sentencing errors warranting relief, we affirm. We have decided this appeal without oral argument under MCR 7.214(E).

Williams' conviction arises out of an assault on his roommate Jan Coyle. At the time of the assault, Williams was 27 and Coyle was 53. Coyle described Williams as his "best friend" and stated that he was "like a son" to him. Williams and Coyle had roomed together for about a year and had lived together at other locations without any serious difficulties. Williams stabbed Coyle in the groin after Coyle told him that he was going to open the door for police officers who had arrived at the apartment. Coyle stated that the building manager had earlier told him that Williams had to leave the building and Coyle acknowledged that he told Williams that he should find another place to live.

Police officers responded to Coyle's building to investigate a reported assault and battery. The officers heard Williams inside the apartment screaming obscenities and attempted to speak with him, but he would not open the door. Coyle screamed and, at that point, the officers forced entry through another door. The officers found Coyle lying on the floor, bleeding copiously. The officers also found a knife by Coyle, but saw no injuries on Williams.

Williams told the officers that the building manager had instructed him to leave the building and that he refused to do so. He also admitted to the officers that he had stabbed Coyle when the officers broke into the apartment. Williams stated that he stabbed him because he thought Coyle was reaching for a knife. Williams denied that he intended to kill Coyle, but admitted that he told the officers that if they entered the apartment he would stab him.

After a bench trial, the trial court found Williams guilty of assaulting Coyle with intent to commit murder. The trial court also found that the prosecution had proved beyond a reasonable doubt that Williams had not acted in self-defense.

At sentencing, the prosecutor objected to the scoring of Offense Variable (OV) 6, which addresses the defendant's intent to kill or injure another individual, see MCL 777.36, at zero points. The prosecutor argued that OV 6 should be scored at 25 points because the evidence showed that Williams had the unpremeditated intent to kill or the intent to do great bodily harm with a high risk of death. Williams' counsel argued that the evidence did not show that Williams had the intent to kill Coyle. The trial court scored OV 6 at 25 points. The prosecutor also objected to the scoring of OV 10, which addresses the exploitation of a vulnerable victim, see MCL 777.40, at zero points. For that variable, the prosecutor argued that it should be scored at ten points given the disparity of age between Coyle and Williams and the fact that Coyle was disabled. Williams' counsel deferred to the trial court's discretion as to that variable. The trial court elected to score OV 10 at ten points. The revised sentencing guidelines provided for a minimum sentence range of 225 to 750 months. The trial court sentenced Williams to serve from 25 to 50 years in prison with credit for 124 days.

Williams first argues that the trial court abused its discretion when it scored OV 6 at 25 points. The trial court has discretion to determine the number of points to be scored under an offense variable provided that there is record evidence to support the score; and this Court will uphold a scoring decision for which there is any record evidence. *People v Hornsby*, 251 Mich App 462, 468; 650 NW2d 700 (2002).

Under MCL 777.36(1), the trial court must score OV 6 on the basis of the offender's intent to kill or injure. If the "offender had premeditated intent to kill" or the offense was committed while committing or attempting to commit certain specified offenses not relevant here, the trial court should score OV 6 at 50 points. MCL 777.36(1)(a). If the "offender had unpremeditated intent to kill, the intent to do great bodily harm, or created a very high risk of death or great bodily harm knowing that death or great bodily harm was the probable result," the trial court should score OV 6 at 25 points. MCL 777.36(1)(b). If the "offender had intent to injure or the killing was committed in an extreme emotional state" or "there was gross negligence amounting to an unreasonable disregard for life" the trial court should score OV 6 at 10 points. MCL 777.36(1)(c). Finally, if "offender had no intent to kill or injure," the trial court should score OV 6 at zero points.

Williams contends that, at most, the evidence showed that he had an intent to injure Coyle and that the injury occurred in a combative situation. The trial court, sitting as the finder of fact, rejected Williams' claim of self-defense. Moreover, when finding him guilty of assault with intent to commit murder, the trial court noted that the evidence showed that Williams stabbed Coyle in the groin, a vulnerable area of the body, with an eight-inch knife, and found that Coyle would have died had he not received prompt medical attention. This evidence supported the trial court's conclusion that Williams intended to kill Coyle as opposed to merely injure him. See *People v Hoffman*, 225 Mich App 103, 111; 570 NW2d 146 (1997) (noting that the intent to kill may be proven by inference from any facts in evidence). Thus, there was evidence to support the trial court's scoring of OV 6 at 25 points. MCL 777.36(1)(b).

Williams also argues that the trial court abused its discretion by scoring OV 10 at ten points. Specifically, he argues that there was no evidence that he exploited Coyle's vulnerability.

OV 10 addresses the exploitation of a vulnerable victim by the offender. See MCL 777.40. If the "offender exploited a victim's physical disability, mental disability, youth or agedness, or a domestic relationship, or the offender abused his or her authority status," the trial court should score this variable at 10 points. MCL 777.40(1)(b). The term exploit means "to manipulate a victim for selfish or unethical purposes," see MCL 777.40(3)(b), and the term vulnerability "means the readily apparent susceptibility of a victim to injury, physical restraint, persuasion, or temptation," see MCL 777.40(3)(c).

Here, the undisputed evidence showed that Coyle was twice as old as Williams and walked with the aid of a cane. The evidence also showed that, shortly before he stabbed Coyle, Williams knocked Coyle to the floor and forced him to remain there. He also admitted that he told the police officers that he would stab Coyle if they entered. This evidence supports an inference that Williams exploited Coyle's vulnerability as an older person with a disability in order to commit the charged offense. Therefore, the trial court did not abuse its discretion in scoring OV 6 at 10 points. *Hornsby*, 251 Mich App at 468.

There were no sentencing errors warranting relief.

Affirmed.

/s/ William B. Murphy  
/s/ Jane M. Beckering  
/s/ Michael J. Kelly