STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellant,	UNPUBLISHED July 12, 2011
v	No. 295833 Wayne Circuit Court
CHRISTOPHER SCOTT NORMAN, Defendant-Appellee.	LC No. 09-013573-FH

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	
v	No. 296192 Wayne Circuit Court
CHRISTOPHER SCOTT NORMAN, Defendant-Appellant.	LC No. 09-013573-FH

Before: MURRAY, P.J., and FITZGERALD and RONAYNE KRAUSE, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of three counts of child sexually abusive activity, MCL 750.145c(2); three counts of using a computer to commit child sexually abusive activity, MCL 752.797(3)(f); MCL 750.145c(2); three counts of using a computer to communicate with another to commit knowing possession of child sexually abusive material, MCL 750.145d(2)(d); MCL 750.145c(4); and three counts of knowing possession child sexually abusive material, MCL 750.145c(4)(a). Defendant was sentenced to prison terms of 3 years, 6 months to 20 years for child sexually abusive activity, two to ten years for using a computer to communicate with another to commit knowing possession of child sexually abusive material, and two to four years for knowing possession of child sexually abusive material.[1]

[1] At sentencing, the trial court vacated defendant's convictions of using a computer to commit child sexually abusive material, MCL 752.797(3)(f); MCL 750.145c(2), because the six-year

In Docket No. 295833, the prosecution argues that several scoring errors necessitate resentencing. In Docket No. 296192, defendant also requests resentencing and claims that insufficient evidence existed to support his convictions of child sexually abusive activity in light of our Supreme Court's recent holding in *People v Hill*, 486 Mich 658; 786 NW2d 601 (2010). Both appeals are of right and were consolidated on February 3, 2010. *People v Norman*, unpublished order of the Court of Appeals, entered February 3, 2010 (Docket Nos. 295833 & 296192). For the reasons set forth below, we vacate defendant's convictions under MCL 750.145c(2) and remand for entry of convictions of the lesser offense under MCL 750.145c(4) as well as for resentencing consistent with this opinion.

The facts of this case are straightforward. On March 19, 2009, defendant's wife, Kari Norman, called police to report that she had found child pornography on the computer she shared with defendant. When detectives arrived at Norman and defendant's apartment, they discovered numerous images of nude children being sexually abused and performing sexual acts on compact discs (CDs) and computers. Norman explained that she had discovered the images, which she had not previously viewed or downloaded, while checking defendant's computer for evidence of infidelity. Defendant was arrested when he returned home from work and later confessed that the CDs and computer hard drives contained child pornography that he had downloaded and copied. A few weeks later on May 4, 2009, after defendant was released on bond, police again received a call from Norman, this time to report that defendant had a computer in his home in violation of his bond conditions. Police obtained a search warrant and discovered two hard drives containing child pornography in defendant's apartment. Defendant denied at his ensuing trial that he had downloaded or was aware that child pornography existed on his hard drives or on CDs he had burned. Nonetheless, the jury convicted defendant of the aforementioned offenses, and following sentencing, these appeals followed.

As a preliminary matter, we agree with defendant's appeal in Docket No. 296192 that his convictions under MCL 750.145c(2) cannot stand where the evidence showed only that defendant possessed the CDs and hard drives containing the digital images of child sexually abusive material, but not that he "arrange[d] for, produce[d], ma[de], or finance[]d" child sexually abusive activity or attempted to do the same.[2] As our Supreme Court recently held – and as the prosecution concedes – "a defendant may not be convicted [under MCL 750.145c(2)] when there is not proof beyond a reasonable doubt that he had a criminal intent to do something other than possess the CD-Rs for his own personal use." *Hill*, 486 Mich at 662. Under these circumstances, the proper course is to vacate defendant's convictions under MCL 750.145c(2) and remand for entry of the lesser offense of knowing possession of child sexually abusive material under MCL 750.145c(4) and resentencing.[3] *Id*. at 683; see also *People v Williams*, 475

---

statute of limitations on those offenses had lapsed before defendant's indictment. See MCL 767.24(5). The prosecution does not challenge this ruling.

[2] In reviewing the sufficiency of the evidence, we view the evidence in the light most favorable to the prosecution and determine whether a rational trier of fact could have found that the essential elements of the crime were proved beyond a reasonable doubt. *People v Ericksen*, 288 Mich App 192, 196; 793 NW2d 120 (2010).

[3] As noted later in the opinion, this renders defendant's convictions of using a computer to communicate with another for the purpose of committing knowing possession of child sexually

Mich 101, 104-105; 715 NW2d 24 (2006), citing *People v Randolph*, 466 Mich 532, 553; 648 NW2d 164 (2002), and *People v Bearss*, 463 Mich 623, 631; 625 NW2d 10 (2001).

Both parties additionally contend – although this time not in concert – that resentencing is required because the trial court misscored several offense variables (OVs). Each challenge was properly raised below and is therefore preserved. MCL 769.34(10); *People v Kimble*, 470 Mich 305, 313-314; 684 NW2d 669 (2004). This Court reviews de novo a sentencing court's application of the sentencing guidelines, *People v Cannon*, 481 Mich 152, 156; 749 NW2d 257 (2008), but "reviews a sentencing court's scoring decision to determine whether the trial court properly exercised its discretion and whether the record evidence adequately supports a particular score," *People v McLaughlin*, 258 Mich App 635, 671; 672 NW2d 860 (2003). "Scoring decisions for which there is any evidence in support will be upheld." *People v Endres (On Remand)*, 269 Mich App 414, 417; 711 NW2d 398 (2006).

In his appeal, Docket No. 296192, defendant's only scoring challenge is to his ten point score for OV 19, MCL 777.49 (interference with the administration of justice). A court properly scores ten points under OV 19 "if the defendant interfered with the administration of justice, but did so without the use of force or a threat of force." *People v Smith*, 488 Mich 193, 201; 793 NW2d 666 (2010); MCL 777.49(c). "[I]nterference with the administration of justice encompasse[s] more than just the actual judicial process," *id*. at 201-202, and may include deterring a witness from testifying or reporting a crime, *Endres*, 269 Mich App at 420-421, or "interfering with a police officer's attempt to investigate a crime . . . ," *People v Passage*, 277 Mich App 175, 180; 743 NW2d 746 (2007). Notably, Norman testified that defendant told her "not to worry about" appearing in court to testify because her only consequence would be a bench warrant, which in any event, would not result in the loss of her nursing license. Norman subsequently left the state and called the court from Missouri to indicate her intent not to testify. Additionally, circumstantial evidence arguably revealed that defendant hid at least one of the hard drives that the police subsequently found when investigating Norman's second call.[4] Given that we must uphold a scoring decision for which *any* evidence exists in support, a score of ten points for OV 19 was appropriate.

This brings us to Docket No. 295833, which is the prosecution's challenge to the trial court's scoring of OVs 12 and 13. OV 12 is scored for contemporaneous felonious criminal acts. MCL 777.42(1). Concerning OV 12, a trial court is to score 25 points if defendant committed "[t]hree or more contemporaneous felonious criminal acts involving crimes against a person . . . ."[5] MCL 777.42(1)(a). Over the prosecution's objection, the trial court scored only ten points

abusive material, MCL 750.145d(2)(d), as the convictions carrying the highest maximum penalty at ten years.

[4] Specifically, Norman testified that defendant removed a hard drive the day the search warrant was executed, but she did not know what he did with it.

[5] A felonious criminal act is contemporaneous if "[t]he act occurred within 24 hours of the sentencing offense" and "[t]he act has not and will not result in a separate conviction." MCL 777.42(2)(a). Defendant did not raise below and does not contest on appeal that he committed three or more felonious criminal acts contemporaneously. Thus, at issue is only whether the contemporaneous acts may be considered "crimes against a person . . . ." MCL 777.42(1)(a).

for OV 12, opining that "this type of offense is a crime against humanity. A crime against law and order," and not a crime against a person. However, MCL 777.16g(1) expressly categorizes the scored offense, MCL 750.145c(2), as a crime against a person. As this Court has recently explained, the offense category designations under MCL 777.11 to MCL 777.18 govern a trial court's scoring of the offense categories. *People v Wiggins*, 289 Mich App 126, 130-131; 795 NW2d 232 (2010). Thus, as in *Wiggins*, "[t]he trial court erred when it found that it was free to look at the substance of the crime rather than the offense category designations under the guidelines themselves because the Legislature used the term 'involving crimes against a person'" instead of the phrase "crimes against humanity" as the trial court substituted. *Id*. at 130. Accordingly, the court erred in scoring OV 12.

We also agree with the prosecution that 25 points was an appropriate score under OV 13 (continuing pattern of criminal behavior). MCL 777.43. Twenty-five points are appropriately scored when "[t]he offense was part of a pattern of felonious criminal activity involving 3 or more crimes against a person." MCL 777.43(1)(c). All crimes within a five-year period of the sentencing offense, including the sentencing offense, are counted regardless of whether convictions resulted. MCL 777.43(2)(a). Without explanation, the trial court scored zero points for OV 13. However, the amount of child sexually abusive material possessed by defendant was legion. And MCL 777.43 "requires that the trial court assign the greatest number of points possible when scoring [OV 13]." *People v Houston*, 473 Mich 399, 406 n 14; 702 NW2d 530 (2005). Additionally, for the reasons previously stated, defendant's argument that possession of child sexually abusive material is not a crime against a person directly contradicts the intent of the Legislature as reflected in MCL 777.16g. The court's score of only ten points was an abuse of discretion.

Before concluding, we note that because the original sentencing offense, MCL 750.145c(2), has been vacated, the sentencing offense on remand is now MCL 750.145d(2)(d) as it carries the highest maximum sentence of the remaining convictions at ten years. Notwithstanding this change, it is clear from the record that defendant possessed far more child sexually abusive material than his convictions reflect under MCL 750.145c(4). As MCL 750.145c(4) is categorized as a crime against a person under MCL 777.16g and underlay the convictions under § 145d(2)(d), a score of 25 points for both OV 12 and 13 remains appropriate as concluded above. Therefore, because the trial court's scoring errors altered the appropriate guidelines range,[6] resentencing consistent with this opinion is required. *People v Francisco*, 474 Mich 82, 89-91, 91 n 8; 711 NW2d 44 (2006).

[6] The trial court's calculations placed defendant in the C-II cell on the sentencing grid for his vacated class B offense, with a corresponding minimum sentencing range of 30 to 50 months. With 25 points assessed each for OVs 12 and 13 (and the score of 10 points for OV 19), defendant's total OV score of 60 points places him in the C-V cell on the grid for his class D offense, with a recommended minimum sentence range of 19 to 38 months.

For the foregoing reasons, we vacate defendant's convictions under MCL 750.145c(2) and remand for entry of the lesser convictions under MCL 750.145c(4) as well as for resentencing consistent with this opinion. We do not retain jurisdiction.

/s/ Christopher M. Murray
/s/ E. Thomas Fitzgerald
/s/ Amy Ronayne Krause