

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

UNPUBLISHED
July 31, 2012

V

CORDARRELL ISIAH SIMS,

Defendant-Appellant.

No. 292529
Macomb Circuit Court
LC No. 2008-000791-FC

ON REMAND

Before: WILDER, P.J., and SERVITTO and SHAPIRO, JJ.

SHAPIRO, J. (*dissenting*).

I respectfully dissent and would remand for resentencing on the conspiracy to commit home invasion conviction.

The defendant was convicted by guilty plea, of home invasion, conspiracy to commit home invasion and assault with intent to do great bodily harm. The circumstances of this home invasion were extremely disturbing and involved children witnessing the beating of their mother by someone their family had treated as a friend. I agree that a minimum sentence at the top of the guidelines for home invasion, i.e. 140 months was proper. I also agree that given the circumstances of the crime, the trial court properly exercised its discretion in ordering that sentence to be served consecutive to the 67 month minimum imposed for the assault with intent to commit great bodily harm committed during the home invasion.

I conclude, however, that the trial court erred in ordering, without explanation, that the 140 month minimum sentence for conspiracy to commit home invasion be served consecutive to the home invasion sentence.¹ The home invasion statute provides that “the court may order a

¹At defendant’s guilty plea proceeding, neither the court nor counsel made any reference to the possibility of consecutive sentences. Similarly, the presentence report made no recommendation that the conspiracy sentence be made consecutive. At sentencing, defense counsel requested a sentence “in the middle of the guidelines,” and the prosecutor stated that in his view “the top of

term of imprisonment imposed for home invasion in the first degree to be served consecutively to any term of imprisonment imposed for any other criminal offense arising from the same transaction.” MCL 750.110a(8). I would follow *People v Hill*, 221 Mich App 391, 394; 561 NW2d 862 (1997), which held that “[t]he home invasion statute permits consecutive sentencing when another felony occurs *during [the] home invasion*” (emphasis added). I am not aware of any case in which our Court approved, or even considered, the propriety of a court imposing consecutive sentences for home invasion and for conspiracy to commit home invasion, nor does the majority cite any.

Assuming, however, that such a sentence is within the scope of the trial court’s discretion, it is plain that a trial court imposing consecutive sentences for home invasion and conspiracy to commit that crime should be required to state the reasons for that discretionary decision. The majority, citing *People v St John*, 230 Mich App 644, 649; 585 NW2d 849 (1998), concludes that we have no authority to review the total length of sentences imposed consecutively so long as each sentence falls within the guidelines. However, this goes well beyond the holding in *St John*. There we held that we “are not *required*” (emphasis added) to conduct such a review; we did not conclude that we are wholly without authority to do so. Moreover, the facts of *St. John* suggest why such a review was not necessary there; the consecutive sentence was imposed for an assault committed *during* the home invasion. *St. John* did not address the unique circumstance we are confronted with in this case, i.e., a discretionary 100% increase in the total sentence based on a conspiracy charge which did not cause any independent victimization and for which there are no sentencing guidelines other than the guidelines for the underlying crime.

Accordingly, I would remand for resentencing on the conspiracy charge.

/s/ Douglas B. Shapiro

the guidelines are an appropriate sentence.” but made no request for consecutive sentences. The first reference to a consecutive sentence was when the sentencing court pronounced sentence.