

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff-Appellee,

UNPUBLISHED
June 26, 2012

v

ROBERT EDMUND McCORMICK,
Defendant-Appellant.

No. 300554
Presque Isle Circuit Court
LC No. 09-92553-FC

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

PER CURIAM.

Defendant pled guilty to one count of delivery of less than 50 grams of a controlled substance (oxycodone), MCL 333.7401(2)(a)(iv), and one count of maintaining a drug house, MCL 333.7405(1)(d). Defendant was sentenced to serve concurrent prison terms of 38 months to 20 years and 14 months to 2 years on the respective charges. Defendant now appeals by leave granted, challenging his sentences. We affirm.

Defendant argues that he is entitled to resentencing because offense variables (OVs) 12 and 19 were erroneously scored. We disagree. Where the sentence imposed after trial is within the appropriate guidelines range, a party may challenge the scoring of the sentencing on appeal only if the issue was raised at sentencing, in a motion for resentencing, or in a motion to remand. MCL 769.34(10); *People v Kimble*, 470 Mich 305, 310-311; 684 NW2d 669 (2004). Because defendant filed a timely motion for resentencing challenging the scoring of OV 12 and 19, the issue has been preserved.

We review a sentencing guidelines score “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). We will affirm unless the trial court erred in scoring the guidelines or relied on inaccurate information. MCL 769.34(10). Issues involving the interpretation and application of statutory provisions and are reviewed de novo. *People v Barbee*, 470 Mich 283, 285; 681 NW2d 348 (2004).

Defendant first claims that OV 12 was improperly scored at five points. OV 12 considers felonious criminal acts occurring contemporaneously with the offense for which the defendant has been convicted. MCL 777.42. The lower court scored five points for OV 12 because defendant was a convicted felon in possession of two firearms at the time of his arrest. Relying on MCL 777.42(1)(d), defendant argues that the court erred because possession of firearm by a

felon is designated as a crime against public safety.¹ MCL 750.224f; MCL 777.16m. While MCL 777.42(1)(d) allows for the scoring of five points if there was “[o]ne contemporaneous felonious criminal act involving a crime against a person,” defendant fails to recognize that MCL 777.42(1)(e) allows a sentencing court to assess five points where “[t]wo contemporaneous felonious criminal acts involving other crimes were committed.” Consequently, under MCL 777.42(1)(e), the two contemporaneous crimes need not be crimes against a person, and we are satisfied that defendant’s possession of two firearms as a convicted felon at the time of his arrest supports the sentencing court’s assessment of five points for OV 12.

Defendant next claims that OV 19 was improperly scored because he merely asserted his innocence, offered no false information, and made no threats when the police questioned him and searched his home. Defendant asserts that his conduct cannot be considered “obstructing justice” and consequently does not warrant any score under OV 19. Defendant further argues that upholding an OV 19 score for maintaining innocence when questioned by police would require an assessment of ten points under OV 19 for all defendants who enter a plea of not guilty.

OV 19 relates to interference with the administration of justice. MCL 777.49. The statute provides that an assessment of ten points is appropriate where “[t]he offender otherwise interfered with or attempted to interfere with the administration of justice.” MCL 777.49(c). Our Supreme Court has held that the “administration of justice” encompasses more than the judicial process and includes the work of law enforcement officers, specifically the investigation of a crime, as an integral component in the administration of justice. *Barbee*, 470 Mich at 287. Thus, “interference with the administration of justice” includes, but is not limited to, acts that constitute “obstruction of justice.” *Id.* at 286. In *Barbee*, the Court upheld a ten-point OV 19 score where the defendant provided a false name to the police during a traffic stop for operating a motor vehicle while intoxicated. *Id.* at 285. The Court rejected the defendant’s argument that no interference occurred because the officer would have learned his true identity in due course, explaining that “it is certainly interference with the administration of justice to provide law enforcement officers with a false name.” *Id.* at 288.

Here, defendant informed police that he did not have any weapons and was not involved in selling drugs. Because defendant had two weapons in his home and was involved in the sale of oxycodone pills, both factual assertions constituted providing false information to the police. *Id.* Although not required or compelled to speak with police, defendant chose to provide specific and false statements during police questioning in an effort to hinder the investigation of his crimes. Additionally, as the *Barbee* Court rejected the argument that inevitable discovery of the defendant’s true identity precluded interference, here, defendant’s dishonesty constitutes interference despite the inevitable discovery by the police of defendant’s firearms and pills.

¹ The sentencing guidelines categorize all felonies into six distinct categories: crimes against a person, crimes against property, crimes involving a controlled substance, crimes against public order, crimes against public trust, and crimes against public safety. *People v Smith*, 488 Mich 193, 199; 793 NW2d 666 (2010).

Accordingly, because the trial court's assessment of ten points for OV 19 was based upon defendant's voluntary and dishonest factual statements, not his general denial of guilt or assertion of innocence during a required judicial proceeding, the sentencing court appropriately scored ten points under OV 19.

Finally, defendant contends that he received ineffective assistance of counsel when his attorney failed to specifically object to the OV 12 and OV 19 scores at sentencing. However, defense counsel had no duty or obligation to make a meritless motion or raise a futile objection. *People v Goodin*, 257 Mich App 425, 433; 668 NW2d 392 (2003).

Affirmed.

/s/ Kurtis T. Wilder
/s/ Michael J. Talbot
/s/ Deborah A. Servitto