

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

UNPUBLISHED
May 17, 2012

v

PERCY WILLIAMS,

Defendant-Appellant.

No. 301147
Alger Circuit Court
LC No. 2010-001904-FH

Before: MARKEY, P.J., and BECKERING and M. J. KELLY, JJ.

PER CURIAM.

Defendant Percy Williams appeals as of right from his conviction, following a bench trial, of assaulting a prison employee, MCL 750.197c. The trial court sentenced defendant as a third-offense habitual offender, MCL 769.11, to 48 months' to 10 years' imprisonment. We affirm.

I. PERTINENT FACTS

On December 9, 2009, defendant was seen tearing apart a jacket in his prison cell. Officer Gerald Monticello and another officer approached defendant and requested that he give them the torn jacket. Defendant refused. The officers searched his cell and found the torn jacket and a pair of earbud headphones that had been altered. The guards confiscated these items.

Shortly after, defendant left his cell when the door was opened as his cellmate returned from the yard. Despite being told to return to his cell, defendant went to where Officer Monticello was standing and completing paperwork. Defendant requested his earbuds back. Officer Monticello advised him that he could not have them because they had been altered. Defendant then lunged at the officer, striking him first on the top of the head with a closed fist and a second time "square in the nose and upper lip." Officer Monticello's nose began "gushing blood." Two other officers who were standing nearby stepped in to assist Officer Monticello in restraining defendant, who was giving "quite a bit of resistance." Additional staff was called to help. Eventually, defendant was handcuffed, restrained on a gurney, examined by a prison doctor for pain in his finger that defendant attributed to his striking the officer, and taken to the segregation unit by the prison captain.

II. OFFENSE VARIABLE 19

Defendant argues that the trial court erred when scoring offense variable 19 (OV 19), MCL 777.49, at 25 points for threatening “the security of a penal institution.” MCL 777.49(a). Defendant argues that the score of 25 points is not justified because there is no evidence of a diversion of prison staff from other specific duties or of an actual threat to the security of the prison. We review the court’s scoring of OV 19 for an abuse of discretion. *People v McLaughlin*, 258 Mich App 635, 671; 672 NW2d 860 (2003). “A sentencing court has discretion in determining the number of points to be scored, provided that evidence of record adequately supports a particular score. Scoring decisions for which there is any evidence in support will be upheld.” *People v Hornsby*, 251 Mich App 462, 468; 650 NW2d 700 (2002) (internal citations omitted).

The record indicates that as many as 20 members of the prison staff may have responded to the incident. Ultimately, a minimum of five prison personnel were redirected from their normal duties and unavailable as a result of this incident, including Officer Monticello, whose absence was prolonged because he sought medical attention at a hospital for his injury. At least two officers were relieved of their duties so that they could clean up after getting Officer Monticello’s blood on them during the struggle to subdue defendant. Defendant’s conduct, thus, threatened the security of the prison by diverting officers from other areas, leaving the prison more susceptible to a security breach. Accordingly, the record evidence in this case overwhelmingly supports a score of 25 points for OV 19.

III. SUFFICIENCY OF THE EVIDENCE

In a pro se supplemental brief filed under Supreme Court Administrative Order No. 2004-6, Standard 4, defendant contends that there was insufficient evidence to support his conviction of assaulting a prison employee. We review a challenge to the sufficiency of the evidence de novo. *People v Lueth*, 253 Mich App 670, 680; 660 NW2d 322 (2002). In determining whether sufficient evidence was presented at trial to support a conviction, this Court “must view the evidence in a light most favorable to the prosecution and determine whether any rational trier of fact could have found that the essential elements of the crime were proven beyond a reasonable doubt.” *People v Wolfe*, 440 Mich 508, 515; 489 NW2d 748 (1992), amended on other grounds 441 Mich 1201 (1992).

MCL 750.197c(1) provides that “[a] person lawfully imprisoned . . . who . . . through the use of violence, threats of violence or dangerous weapons, assaults an employee of the place of confinement . . . knowing the person to be an employee . . . is guilty of a felony” To convict defendant of assault of an employee of a place of confinement, the prosecution had to prove that defendant “(1) was lawfully imprisoned in a place of confinement; (2) used violence, threats of violence, or dangerous weapons to assault an employee of the place of confinement or other custodian; and (3) knew that the victim was an employee or custodian.” *People v Neal*, 232 Mich App 801, 802-803; 592 NW2d 92 (1998), adopted by special panel 233 Mich App 649; 592 NW2d 95 (1999). A “[p]lace of confinement includes a correctional facility operated by the department of corrections, a local unit of government, or a private vendor under . . . MCL 791.220i.” MCL 750.197c(2)(a).

Defendant first argues that the prosecutor failed to prove beyond a reasonable doubt that he was lawfully imprisoned at the time of the charged offense. Defendant points out that the records-office supervisor at Alger Correctional Facility, who testified at trial about the status of his incarceration, merely established that he was serving a sentence *at the time of trial* for aggravated assault, assault with a dangerous weapon, and carjacking. The witness failed to state whether those crimes occurred before or after the charged offense and, thus, failed to establish that defendant was lawfully incarcerated at the time of the offense. While the lawfulness of defendant's imprisonment remains a necessary element in establishing a violation of MCL 750.197c, "[c]ircumstantial evidence and reasonable inferences arising therefrom may constitute proof of the elements of an offense." *Neal*, 232 Mich App at 804-805. "The jury may rely on its common knowledge that a person must have been convicted of a crime to attain prison inmate status. Thus, [the trier fact] may reasonably infer that a defendant was lawfully imprisoned from evidence that he was incarcerated in a state prison." *Id.* at 805.

Here, Officer Monticello testified that he was working as an RUO (resident unit officer) at Alger Correctional Facility on December 9, 2009. He further testified that he was acquainted with defendant because defendant was "locked down on A Wing in Cell 101." Viewed in the light most favorable to the prosecution, we hold that a rational trier of fact could find that defendant, who was residing at Alger Correctional Facility at the time of the offense, "must have been convicted of a crime to attain prison inmate status" and, thus, was lawfully imprisoned at the time of the offense. See *id.*

Defendant also claims that the prosecutor failed to establish that the victim, Officer Monticello, was "an employee of prison (or other place of confinement)." Although defendant acknowledges that Officer Monticello testified that he was an employee of Alger Correctional Facility, defendant contends that the prosecution failed to establish that Alger Correctional Facility was a prison or other place of confinement. On the basis of common knowledge about Alger Correctional Facility, the penal code's definition of a "place of confinement" as a "correctional facility," and the testimony at trial identifying defendant as both "Prisoner Williams" and "Inmate Williams" and describing his confinement to a cell and interaction with prison employees, we conclude that a rational trier of fact could easily find that Alger Correctional Facility is a prison or other place of confinement, which indeed it is. Defendant's argument regarding the sufficiency of the evidence lacks merit.

Affirmed.

/s/ Jane E. Markey
/s/ Jane M. Beckering
/s/ Michael J. Kelly