

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DRE'VONNE MARQUEL SHERMAN,

Defendant-Appellant.

UNPUBLISHED
January 17, 2012

No. 301394
Saginaw Circuit Court
LC No. 06-027123-FJ

Before: SAWYER, P.J., and WHITBECK and M. J. KELLY, JJ.

PER CURIAM.

Defendant Dre'Vonne Sherman appeals by delayed leave granted from his plea-based conviction of assault with intent to commit murder.¹ The trial court sentenced Sherman to serve 15 to 45 years in prison. We affirm.

I. FACTS

Sherman admitted at his plea hearing that, on January 3, 2006, he received a phone call from his friend Kevin Simon informing him that a man named Lando Young had shot another friend. Sherman stated that he later got into Simon's vehicle along with three other people and came to understand that the purpose of the trip was to shoot Young in retaliation for what he had done to their friend. Sherman maintained that he remained in the car during the shootings of two men, one of them fatal, but never offered encouragement in connection with those shootings. But Sherman did admit that he was "helping the group look for Lando Young," who was later shot, although not killed, by one of Sherman's companions. Sherman's conviction and sentence stems from the shooting of Young.

Sherman's mother testified at a pretrial motion hearing that Sherman was only 15 years old at the time of the shooting, had reading comprehension problems, and had been enrolled in special education classes in the past. She reported that he had seen a neurosurgeon once a year since a childhood accident in which he received a head injury. Sherman's mother stated that on the day police questioned Sherman, she brought him to the police station when she went there to

¹ MCL 750.83.

pick up his brother, who police had been questioning earlier in the day. There is conflicting testimony whether Sherman's mother was informed that he was to be questioned and whether she was asked if she wanted to be present, but she testified that she was not present in the room when the police questioned Sherman.

In exchange for Sherman's plea of guilty and his agreement to testify in any trial of a co-defendant, the prosecution agreed to dismiss several other charges. Before sentencing, Sherman moved the trial court to dismiss his plea, asserting his innocence, miscommunication between himself and his attorney, and refusal to testify against any codefendant. The trial court denied this motion. At sentencing, Sherman unsuccessfully challenged the scoring of the sentencing guidelines in connection with the trial court's scoring of offense variables (OVs) 3 and 6. Sherman now appeals.

II. WITHDRAWAL OF PLEA

A. STANDARD OF REVIEW

Sherman argues that he should have been allowed to withdraw his plea because there was an insufficient factual basis for his conviction. He asserts that he never admitted to any action that constituted assistance in killing Young; he never drove the vehicle, held a weapon, or had any contact with Young; and that he was merely present where criminal activity took place. Further, Sherman contends that the main evidence against him was his own statement as a 15 year old without counsel or parent present, which the trial court admitted despite his comprehension problems. We review this assertion of error for an abuse of discretion.²

B. LEGAL STANDARDS

Under MCR 6.310(B)(1), a plea may be withdrawn on the defendant's motion or with the defendant's consent only where the interests of justice so require, and where withdrawal of the plea would not substantially prejudice the prosecutor because of reliance on the plea. If the defendant's motion is based on an error in the plea proceeding, the trial court must permit the defendant to withdraw.³

C. ANALYSIS

The evidence before the trial court in this case shows that Sherman was more than merely present in the car. Sherman admitted that he took an active role in "helping the group look for Lando Young," with the knowledge that the purpose of locating Young was so that Sherman's companions could shoot Young in retaliation for the earlier incident. Sherman asserts that the primary evidence against him was his statement to the police, which he gave as a fifteen year old, without counsel or parent present. However, Sherman's admissions in court obviated any need to rely on his prior statement. Further, an aider or abettor of a crime fully shares in the guilt

² *People v Wilhite*, 240 Mich App 587, 594; 618 NW2d 386 (2000).

³ MCR 6.310(C).

of the principal.⁴ Aiding and abetting involves all forms of assistance rendered to the perpetrator of a crime, including all words or actions that might encourage or support the commission of the crime.⁵ We therefore conclude that the record contains a sufficient factual basis to support Sherman's conviction of assault with intent to murder.

III. SENTENCING

A. STANDARD OF REVIEW

Sherman argues that the trial court erred in scoring his offense variable factors during sentencing. “[A] sentence is invalid if it is based on inaccurate information.”⁶ If a minimum sentence is within the appropriate guidelines sentence range, this Court must affirm that sentence absent an error in scoring the guidelines, or inaccurate information relied upon in determining the sentence.⁷ Where a sentence is based upon an inaccurate calculation of the guidelines range, the defendant is entitled to resentencing.⁸ Interpretation and application of the sentencing guidelines is a question of law that this Court reviews de novo.⁹

B. OV 3

The trial court assessed 100 points for OV 3, which is appropriate where “[a] victim was killed” and where “homicide is not the sentencing offense.”¹⁰ Sherman argues that he was incorrectly scored 100 points because Young was not killed. But the wording of MCL 777.33(2)(a) suggests broader application than scoring exclusively in connection with a victim involved in the sentencing offense. In this case, there is no dispute that a homicide resulted from the group's conduct, in which Sherman took part. Because the pertinent statute does not limit its application to the victims involved in the sentencing offense, the fact that the murder victim was someone other than Young is not dispositive. For these reasons, we conclude that the trial court properly scored OV 3 at 100 points.

⁴ See MCL 767.39 (“Every person concerned in the commission of an offense, whether he directly commits the act constituting the offense or procures, counsels, aids, or abets in its commission may hereafter be prosecuted, indicted, tried and on conviction shall be punished as if he had directly committed such offense.”)

⁵ *People v Rockwell*, 188 Mich App 405, 411-412; 470 NW2d 673 (1991).

⁶ *People v Miles*, 454 Mich 90, 96; 559 NW2d 299 (1997).

⁷ MCL 769.34(10).

⁸ See *People v Francisco*, 474 Mich 82, 92; 711 NW2d 44 (2006).

⁹ See *People v Cannon*, 481 Mich 152, 156; 749 NW2d 257 (2008).

¹⁰ MCL 777.33(1)(a); MCL 777.33(2)(b).

C. OV 6

The trial court assessed 50 points for OV 6, which is appropriate where there was a premeditated intent to kill.¹¹ However, despite Sherman's framing of his assignment of error, he does not actually dispute the 50-point score. Indeed, he states in his brief on appeal that there was "sufficient evidence based on the factual basis presented by the defendant to establish that the group did have intent to kill [Lando Young] as retaliation when the people in the car set out to look for him making that scoring accurate." This Court may hold a party's admissions, supported or not, against that party.¹² Accordingly, Sherman has waived objections to the scoring of this variable.

We affirm.

/s/ David H. Sawyer
/s/ William C. Whitbeck
/s/ Michael J. Kelly

¹¹ MCL 777.36(1)(a).

¹² See *People v Riggs*, 237 Mich App 584, 589 n 2; 604 NW2d 68 (1999).