

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

UNPUBLISHED
April 17, 2012

v

KEQUIEANTIA RAMONE MONTGOMERY,

Defendant-Appellant.

No. 301538
Oakland Circuit Court
LC No. 09-227031-FC

Before: M. J. KELLY, P.J., and FITZGERALD and DONOFRIO, JJ.

PER CURIAM.

This appeal arises from resentencing proceedings following a prior appeal.¹ We affirm defendant’s sentence of 450 months to 80 years for two counts of second-degree murder, MCL 750.316.

Defendant argues that the trial court erred by scoring 10 points for prior record variable (PRV) 6. Prior record variable 6 is relationship to the criminal justice system. MCL 777.56(1). Under PRV 6, 10 points are to be scored if “[t]he offender is on parole, probation, or delayed sentence or on bond awaiting adjudication or sentencing for a felony.” MCL 777.56(1)(c).

The court scored PRV at 10 points because defendant was “on bond awaiting adjudication . . . for a felony” at the time of the murders. MCL 777.56(1)(c). Defendant concedes that on the date of the murders, December 12, 2008, he was free on bond after having been arrested and charged with the felony of possession of less than 25 grams of a controlled substance. He argues, however, that the scoring of 10 points was inconsistent with substantial justice because the felony charge was later dismissed. Alternatively, he argues that the facts of the case amply support a downward departure from the sentencing guidelines.

This Court reviews the trial court’s scoring decision to determine whether it properly exercised its discretion and whether the evidence adequately supported a particular score. *People v McLaughlin*, 258 Mich App 635, 671; 672 NW2d 860 (2003). The interpretation and

¹ *People v Montgomery*, unpublished opinion per curiam of the court of Appeals, issued April 12, 2011 (Docket No. 295358).

application of the statutory sentencing guidelines are legal questions subject to de novo review. *People v Cannon*, 481 Mich 152, 156; 749 NW2d 257 (2008).

Where a sentence falls within the appropriate guidelines sentencing range, this Court shall affirm the sentence unless there is an error in scoring or inaccurate information was relied upon during sentencing. MCL 769.34(10); *People v Jackson*, 487 Mich 783, 792; 790 NW2d 340 (2010). Generally, when scoring the guidelines, “[a] sentencing court has discretion in determining the number of points to be scored provided that evidence of record adequately supports a particular score.” *People v Hornsby*, 251 Mich App 462, 468; 650 NW2d 700 (2002). “Where effectively challenged, a sentencing factor need be proved only by a preponderance of the evidence.” *People v Harris*, 190 Mich App 652, 663; 476 NW2d 767 (1991).

In *People v Jarvi*, 216 Mich App 161, 165; 548 NW2d 676 (1996), this Court considered PRV 6 under the former judicial sentencing guidelines in a case involving an offender who was on bond at the time he committed the sentencing offense. The defendant argued that because he was acquitted of the charge for which he was on bond at the time of the sentencing offense, zero points should have been scored for PRV 6. The Court rejected this argument, reasoning that:

The obvious intent of awarding five points to an individual who commits a crime while on bond or bail has no nexus to issues of guilt or innocence of the underlying charge. Rather, PRV 6 simply recognizes the more egregious nature of an offense committed while a prior relationship to the criminal justice system exists. Nonetheless, calculations may be based on criminal activity for which the defendant was acquitted. . . [*Id.* (internal citations omitted).]

Despite some stylistic language differences between PRV 6 of the judicial guidelines and PRV 6 of the legislative guidelines, the reasoning in *Jarvi* is applicable to both. PRV 6 of the judicial guidelines provided that 5 points should be scored if “[an]other relationship exists” to the criminal justice system, and one such “other relationship” included being “on bond and/or bail” at the time of the instant offense. Judicial Sentencing Guidelines, 2d (1988), p 42. This language corresponds with the language in MCL 777.56(1)(c) that 10 points are to be scored if “[t]he offender is on parole, probation, or delayed sentence or on bond awaiting adjudication or sentencing for a felony. It can be presumed that the Legislature was aware of how this Court had interpreted PRV 6 of the judicial guidelines when drafting MCL 777.56. See *People v Babcock*, 244 Mich App 64, 77; 624 NW2d 479 (2000).

Accordingly, the undisputed fact that defendant was on bond for possession of less than 25 grams of a controlled substance when the sentencing offense was committed supports the scoring of PRV 6.

Alternatively, defendant argues that the trial court erred by failing to consider a downward departure from the sentencing guidelines. A court may depart from the minimum sentencing guidelines range if it has a substantial and compelling reason for the departure and states the reason on the record. MCL 769.34(3); *People v Smith*, 482 Mich 292, 299; 754 NW2d 284 (2008). A sentence within the legislative sentencing guidelines is presumptively proportionate and valid. *People v Brown*, ___ Mich App ___; ___ NW2d ___ (2011) (Docket No. 297728, issued October 20, 2011).

Defendant cites case law and review standards that this Court would employ were it evaluating a trial court's departure from sentencing guidelines. He does not, however, specifically argue that the sentence imposed was disproportionate. To the extent that defendant implies his sentence was disproportionate, the argument is without merit. Defendant argues that the trial court should have considered a downward departure because he has only one juvenile and one adult conviction, but those are circumstances already accounted for in the guidelines. He does not argue that the guidelines somehow did not consider these circumstances appropriately. He also argues that "[d]eparting one cell downward . . . , consistent with what the guidelines would have been had PRV 6 never been scored, is a principled and proportionate departure." However, the only way that PRV 6 would "never have been scored" is if defendant did not have a relationship to the criminal justice system. As already determined, PRV 6 was properly scored.

Affirmed.

/s/ Michael J. Kelly
/s/ E. Thomas Fitzgerald
/s/ Pat M. Donofrio