

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff-Appellee,

UNPUBLISHED
January 10, 2012

v

CURTIS RAY HARJU,

No. 302127
Bay Circuit Court
LC No. 10-010553-FC

Defendant-Appellant.

Before: MURPHY, C.J., and FITZGERALD and METER, JJ.

MEMORANDUM.

A jury convicted defendant of delivery of less than 50 grams of a controlled substance (Oxycontin), MCL 333.7401(2)(a)(iv), and the trial court sentenced defendant as a second-offense habitual offender, MCL 769.10, to a prison term of 28 to 360 months. Defendant appeals as of right, challenging only the scoring of offense variable (OV) 12. We affirm.

Defendant argues that he is entitled to resentencing because the trial court improperly scored OV 12 at five points. We need not decide this issue, however, because even if defendant is correct, resentencing would not be required. Defendant's prior record variable (PRV) score was 5, corresponding to PRV level B, and his total OV score was 40, corresponding to OV level IV. These PRV and OV scores resulted in a minimum guidelines range of 5 to 28 months for defendant, a second-offense habitual offender. If OV 12 was scored at zero, defendant's total OV score would be 35, which also corresponds to OV level IV and a minimum guidelines range of 5 to 28 months. See MCL 777.21; MCL 777.65. "Where a scoring error does not alter the appropriate guidelines range, resentencing is not required." *People v Francisco*, 474 Mich 82, 89 n 8; 711 NW2d 44 (2006).

Affirmed.

/s/ William B. Murphy
/s/ E. Thomas Fitzgerald
/s/ Patrick M. Meter