

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

V

RONALD ALAN BISH a/k/a RONALD ALLEN
BISH, JR.,

Defendant-Appellant.

UNPUBLISHED

April 12, 2012

No. 303900

Calhoun Circuit Court

LC No. 2009-001532-FC

Before: FORT HOOD, P.J., and CAVANAGH and K. F. KELLY, JJ.

PER CURIAM.

Defendant was convicted, following a jury trial, of armed robbery, MCL 750.529, first-degree home invasion, MCL 750.110a(2), unlawful imprisonment, MCL 750.349b, third-degree fleeing and eluding a police officer, MCL 257.602a(3)(a), unlawfully driving away a motor vehicle, MCL 750.413, felon in possession of a firearm, MCL 750.224f, and four counts of possession of a firearm during the commission of a felony (felony-firearm), MCL 750.227b. In *People v Bish*, unpublished per curiam opinion of the Court of Appeals, issued March 3, 2011 (Docket No. 294920), this Court affirmed defendant's convictions, but held that offense variable (OV) 7 was improperly scored and remanded for resentencing. Following resentencing, defendant challenged the scoring for OV 1 and 19, but the trial court rejected the challenge. We affirm.

In our prior opinion, we concluded that OV 7 was improperly scored. On remand, defendant was resentenced as a habitual offender, third offense, MCL 769.11, to 28 to 60 years' imprisonment for armed robbery, 18 to 40 years' imprisonment for first-degree home invasion, 50 to 150 months' imprisonment for unlawful imprisonment, 4 to 10 years' imprisonment for third-degree fleeing and eluding, unlawfully driving away a motor vehicle, and felon in possession, and two years' imprisonment for each felony-firearm conviction.

During resentencing, defendant did not object to the scoring of any OVs. However, after resentencing, he filed a timely motion for correction of his sentence, arguing that OV 1 and OV 19 were improperly scored. The trial court concluded that the guidelines were properly scored and denied defendant's motion. On appeal, defendant again argues that the record does not support the scoring for OV 1 and OV 19.

A trial court's scoring under the sentencing guidelines is reviewed to determine whether the court properly exercised its discretion and whether the record evidence adequately supports a particular score. *People v Lechleitner*, 291 Mich App 56, 62; 804 NW2d 345 (2010). When challenged, a sentencing factor need only be proven by a preponderance of the evidence. *People v Wiggins*, 289 Mich App 126, 128; 795 NW2d 232 (2010). The trial court may rely on reasonable inferences arising from the record evidence to sustain the scoring of an offense variable. *People v Haacke*, 217 Mich App 434, 436; 553 NW2d 15 (1996). A scoring decision will be upheld if there is any supporting record evidence. *People v Harverson*, 291 Mich App 171, 179-180; 804 NW2d 757 (2010). This Court reviews a "trial court's scoring of a sentencing guidelines variable for clear error." *People v Hicks*, 259 Mich App 518, 522; 675 NW2d 599 (2003).

OV 1 addresses the aggravated use of a weapon and provides that 15 points are scored if "[a] firearm was pointed at or toward a victim or the victim had reasonable apprehension of an immediate battery when threatened with a knife or other cutting or stabbing weapon." MCL 777.31(1)(c). A review of the record reveals that the victim was talking on the telephone in his residence when he looked out the window and saw defendant waving him outside. Defendant and an accomplice indicated that their car broke down, and they needed to use the telephone. The victim finished his phone call and handed his phone to defendant's accomplice. There was no indication that the men were hostile. The accomplice "fiddled" with the phone for ten seconds when defendant pulled out a gun, shot straight into the air, and told the victim to get down on the ground. The victim felt that he was in danger and was afraid. The victim described the gun as an "old, worn, grayish" revolver with a small barrel. The accomplice cinched a pretied rope around the victim's hands behind his back, and the men led the victim into his home. During this time, the gun was still in view of the victim. Under the circumstances, we cannot conclude that the trial court erred in the scoring of OV 1. Reasonable inferences arising from the preponderance of the evidence indicate that the gun was pointed toward the victim as he was ordered to the ground and led into his home. *Wiggins*, 289 Mich App at 128; *Haacke*, 217 Mich App at 436.

OV 19 addresses the interference with the administration of justice and is scored at 10 points if "[t]he offender otherwise interfered with or attempted to interfere with the administration of justice." MCL 777.49(c). Defendant argues that OV 19 was improperly scored because the record indicates that he was cooperative and gave a voluntary statement to police. Defendant's argument is without merit. Although defendant was cooperative after he was apprehended, defendant led the police on a high speed chase and misrepresented himself as the victim of an assault. A defendant's obstruction of a police investigation of a crime constitutes interference with the administration of justice for purposes of scoring OV 19. *People v Barbee*, 470 Mich 283, 287-288; 681 NW2d 348 (2004). A defendant's fabrication or deception in an attempt to lead police officers astray also constitutes interference with the administration of justice. *People v Ericksen*, 288 Mich App 192, 204; 793 NW2d 120 (2010). Leading the police on a high speed chase to try and avoid apprehension forms the proper basis to score OV 19. See *People v Cook*, 254 Mich App 635, 638; 658 NW2d 184 (2003), overruled on other grounds *People v McGraw*, 484 Mich 120; 771 NW2d 655 (2009). In light of defendant's

flight from police and misrepresentation that he was the victim of a crime, the trial court did not err in the scoring of OV 19.¹

Affirmed.

/s/ Karen M. Fort Hood

/s/ Mark J. Cavanagh

/s/ Kirsten Frank Kelly

¹ Defendant also alleged that trial counsel was ineffective for failing to object to the scoring of OV 1 and 19. This issue is not preserved for appellate review because it was not raised in the statement of questions presented. *People v Anderson*, 284 Mich App 11, 16; 772 NW2d 792 (2009). In light of our conclusion that the offense variables were properly scored, this issue does not entitle defendant to appellate relief. Trial counsel need not raise a specious objection. *People v Matuszak*, 263 Mich App 42, 60; 687 NW2d 342 (2004).