

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

STEVEN CARL JOHNSON,

Defendant-Appellant.

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UNPUBLISHED

June 12, 2012

No. 304249

Saginaw Circuit Court

LC No. 11-035354-FH

Before: BORRELLO, P.J., and O'CONNELL and TALBOT, JJ.

PER CURIAM.

Defendant appeals as of right from his sentence for operating a motor vehicle while intoxicated, third offense, MCL 257.625 (OWI). The trial court sentenced defendant as a fourth habitual offender, MCL 769.12, to three to seven years' imprisonment on the OWI conviction. The court also sentenced defendant to concurrent jail terms for driving while license suspended, second offense, MCL 257.904, and possessing an open container of alcohol in a motor vehicle, MCL 257.624a. We affirm.

The charges against defendant arose after defendant's car struck another car in a tavern parking lot. Defendant drove away after the collision, but eventually stopped in a field. A deputy sheriff found defendant in his car, drifting in and out of sleep, with an open bottle of beer in the car's center console. Defendant's blood alcohol level exceeded the legal limit of 0.08 grams per 100 milliliters of blood. MCL 257.625(1)(b). A jury found defendant guilty on the charges.

Defendant argues that the trial court erred in scoring Prior Record Variable (PRV) 6 at ten points. We disagree.

"This Court reviews a trial court's scoring decision under the sentencing guidelines to determine whether the trial court properly exercised its discretion and whether the record evidence adequately supports a particular score." *People v Steele*, 283 Mich App 472, 490; 769 NW2d 256 (2009) (internal quotation marks and citation omitted). "Scoring decisions for which there is any evidence in support will be upheld." *People v Endres (On Remand)*, 269 Mich App 414, 417; 711 NW2d 398 (2006). "To the extent that a scoring challenge involves a question of statutory interpretation, this Court reviews the issue de novo." *People v Johnson*, 293 Mich App 79, 84; 808 NW2d 815 (2011).

“PRV 6 considers an offender’s relationship to the criminal justice system.” *Johnson*, 293 Mich App at 84. The trial court is to assess ten points against the defendant if, at the time of the sentencing offense, the defendant was “on bond awaiting adjudication or sentencing for a felony.” MCL 777.56(1)(c). If the defendant was “on bond awaiting adjudication or sentencing for a misdemeanor,” the trial court is to assess five points. MCL 777.56(1)(d). These provisions apply when the matter for which the defendant is on bond arose in a state other than Michigan. MCL 777.56(2). Further, the trial court must assess the highest number of applicable points. MCL 777.56(1).

Defendant acknowledges that at the time of the sentencing offense in Michigan, he was on bond for a misdemeanor charge and, alternatively, a felony charge in Indiana. The Indiana felony charge was for operating while intoxicated within five years of a previous drunken driving conviction. Ind Code 9-30-5-3(a)(1). Defendant asserts that the Indiana felony charge was improper because the charge required proof of a drunken driving conviction within five years, and, according to defendant, his previous conviction occurred outside of the five-year lookback period. Defendant argues that because the Indiana prosecution could not proceed on the felony charge, he was in fact awaiting adjudication for an Indiana misdemeanor, which in turn should have reduced his Michigan PRV 6 score to five points.

The PRV 6 statute requires the sentencing court to identify charges that were pending at the time of the sentencing offense and to assess points on the basis of those charges. MCL 777.56(1)(c), (d). The statute neither instructs nor requires the sentencing court to consider whether the pending charges have adequate factual support. See generally *People v Billings*, 283 Mich App 538, 552; 770 NW2d 893 (2009). Further, the statute clearly instructs the trial court to assess points if the offender is “awaiting adjudication” for a felony. MCL 777.56(1)(c), (d).

In this case, defendant committed the sentencing offense in Michigan while he was on bond awaiting the adjudication of an Indiana felony charge. Therefore, the trial court properly assessed ten points against defendant for PRV 6.

Affirmed.

/s/ Stephen L. Borrello  
/s/ Peter D. O’Connell  
/s/ Michael J. Talbot