

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

MARIO JETON MERRITT,

Defendant-Appellant.

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UNPUBLISHED

July 24, 2012

No. 304752

Oakland Circuit Court

LC No. 2010-234663-FH

Before: DONOFRIO, P.J., and RONAYNE KRAUSE and BOONSTRA, JJ.

PER CURIAM.

Defendant appeals as of right his jury trial convictions for one count of felon in possession of a firearm, MCL 750.224f, and two counts of possession of a firearm during the commission of a felony (felony-firearm), MCL 750.227b. The trial court sentenced defendant as an habitual offender, third offense, MCL 769.11, to three to ten years' imprisonment for the felon in possession of a firearm conviction and two years' imprisonment for each of the felony-firearm convictions. The felony-firearm sentences were to be concurrent to each other and consecutive to the felon in possession of a firearm sentence. All of the sentences were to be consecutive to a parole violation. We affirm.

This case arises from a traffic stop in Detroit. At the time of this incident, two civilians were present with approximately 6 police officers: the driver of the car that had been pulled over and a police intern. While the police officers were conducting this stop, defendant, two other men and one woman came out of a house near to where the stop occurred. They eventually went back inside. However, as the traffic stop was concluding, defendant came out again, went around a corner holding what appeared to be a rifle and walked toward one of the police officers while saying, "I've got something for them. I'm going to take care of this." Defendant racked the rifle as he advanced and the police officer yelled, "He's got a gun. He's got a gun." The police officer ordered defendant to drop the weapon and defendant turned and ran, then took cover behind a pickup truck in the driveway. Another police officer saw defendant lowering a rifle at police over the hood of the vehicle and he was again ordered to drop the weapon. Defendant repeatedly tried to bring the rifle up over the hood, each time being told to drop it. Finally, defendant did drop the gun on the ground next to the truck and ran back into the house. A couple of minutes later, defendant ran back out and grabbed the rifle and then ran between his house and the house next door and threw the gun on the ground next to the neighboring house. He then ran back into his house.

Using a public address system microphone, the officers instructed the people in the house to come out. Three individuals, not defendant, came out with their hands up. Police were given a phone number to contact defendant and they were able to contact him. He eventually came out of the house. The rifle was retrieved and there were eight rounds in the gun, one in the chamber and seven in the magazine.

On appeal, defendant challenges the trial court's scoring of offense variable (OV) 9 and OV 19. Defendant preserved his objections to the scoring of these variables by raising them before the trial court during the sentencing hearing. MCL 769.34(10); *People v Endres (On Remand)*, 269 Mich App 414, 417; 711 NW2d 398 (2006). When reviewing a sentence imposed by a lower court, an appellate court must first determine whether the minimum sentence imposed is within the recommended minimum sentence range under the legislative guidelines; if it is, the sentence must be affirmed on appeal unless the sentencing court made an error in scoring the guidelines or relied on inaccurate information. MCL 769.34(10); *Endres*, 269 Mich App at 417. "A sentencing court has discretion in determining the number of points to be scored, provided that evidence of record adequately supports a particular score." *Id.*, citing *People v Hornsby*, 251 Mich App 462, 468; 650 NW2d 700 (2002). "Scoring decisions for which there is any evidence in support will be upheld." *Endres*, 269 Mich App at 417.

With respect to OV 9, MCL 777.39(1)(c) directs the sentencing court to score ten points when "[t]here were 2 to 9 victims who were placed in danger of physical injury or death." MCL 777.39(2)(a) defines "victim" to include "each person who was placed in danger of physical injury or loss of life or property." MCL 777.39(2)(a). A separate criminal offense as to each victim is not required. *People v Sargent*, 481 Mich 346, 350; 750 NW2d 161 (2008). For the purpose of scoring OV 9, however, only those endangered by the sentencing offense are counted. *Id.* at 350 n 2. The scoring of OV 9 must be based on the sentencing offense alone; "OV 9 does not provide for consideration of conduct after completion of the sentencing offense." *People v McGraw*, 484 Mich 120, 133-134; 771 NW2d 655 (2009).

In this case, the sentencing offense was felon in possession of a firearm (MCL 750.224f), which holds that a person convicted of a felony "shall not possess, use, transport, sell, purchase, carry, ship, receive, or distribute a firearm" until certain criteria are met. In interpreting the statute, we look first to the statute's plain language. *People v Morey*, 461 Mich 325, 330; 603 NW2d 250 (1999) (citation omitted). Where the statutory language is unambiguous, the Legislature is presumed to have intended the meaning expressed and further judicial construction is not required or permitted. *Id.* at 330 (citation omitted). In this case, the plain language of the statute prohibits the possession, use, or carrying of a firearm by a felon. Therefore, pursuant to the plain language of the statute, the offense is ongoing during the possession, use or carrying of the firearm. See *People v Cooks*, 446 Mich 503, 532 n 4; 521 NW2d 275 (1994) (LEVIN, J., dissenting) (noting that criminal acts of possession are continuous in nature). Because possession of a firearm is a continuous offense that is not completed until the defendant relinquishes possession of the firearm, the scoring of OV 9 applies to acts committed by defendant while he was in possession of the firearm. Evidence was presented that defendant walked toward police officers holding a loaded rifle, racked the rifle, and stated: "I've got something for them. I'm going to take care of this." When he was ordered to drop the weapon, defendant took cover behind a vehicle in the driveway and repeatedly attempted to bring the rifle up over the hood. One officer testified that defendant was going down for cover and then

coming back up in “almost kind of like a police tactic” and that when defendant came back up, he aimed the rifle at police over the hood of the vehicle. “Pointing a gun at multiple individuals clearly places them in danger of injury or loss of life.” *People v Harverson*, 291 Mich App 171, 181; 804 NW2d 757(2010). At the time of the incident, there were several police officers and two civilians in the area. Defendant’s actions placed the officers and civilians in danger of physical injury. See *Sargent*, 481 Mich at 350 n 2. These actions were committed before defendant relinquished possession of the weapon and, therefore, during the commission of the sentencing offense, felon in possession of a firearm. Adequate evidence supports the trial court’s scoring. The trial court did not abuse its discretion in scoring ten points for OV 9.

Defendant next challenges the trial court’s scoring of OV 19 (MCL 777.49), which provides that 15 points are to be scored for OV 19 where “[t]he offender used force or the threat of force against another person or the property of another person to interfere with, attempt to interfere with, or that results in the interference with the administration of justice or the rendering of emergency services.” “OV 19 may be scored for conduct that occurred after the sentencing offense was completed.” *People v Smith*, 488 Mich 193, 202; 793 NW2d 666 (2010).

In this case, defendant failed to comply with police orders to drop his weapon and instead took cover behind a vehicle in his driveway. He disregarded further orders to drop the weapon and repeatedly attempted to bring the weapon up over the hood of the vehicle before finally dropping the weapon and running into the house. In scoring 15 points for OV 19, the trial court noted that defendant threw the rifle over a fence, causing police to have to search for the weapon, and observed that defendant’s failure to comply with orders to leave the house and bring the weapon out resulted in “what basically would have been described or can be described as a standoff in a . . . residential neighborhood for a period of time.” Defendant’s failure to comply with officers’ orders both during and immediately after his possession of a loaded rifle provides adequate evidence to support the trial court’s scoring. See *People v Passage*, 277 Mich App 175, 180; 743 NW2d 746 (2007) (“[I]nterfering with a police officer’s attempt to investigate a crime constitutes interference with the administration of justice.”).

In reaching our conclusion, we disagree with defendant’s argument that he only attempted to hide the gun, which, in and of itself, is not adequate to support the trial court’s scoring of OV 19. In this case, defendant did not simply attempt to hide the gun. Rather, defendant repeatedly failed to comply with police orders to surrender the gun and to come out of the house, was armed with a loaded weapon and refused to comply with police officers’ orders to drop the weapon which was adequate to support the trial court’s scoring of OV 19. *Endres*, 269 Mich App at 417. The trial court did not abuse its discretion in scoring 15 points for OV 19.

Affirmed.

/s/ Pat M. Donofrio  
/s/ Amy Ronayne Krause  
/s/ Mark T. Boonstra