

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

PAUL D. NOTTINGHAM,

Defendant-Appellant.

UNPUBLISHED

February 16, 2001

No. 222021

Kent Circuit Court

LC No. 99-000894-FC

Before: Talbot, P.J., and Sawyer and Markey, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of the lesser-included offense of unarmed robbery, MCL 750.530; MSA 28.798. The trial court sentenced defendant as a third habitual offender, MCL 769.11; MSA 28.1083, to seven to thirty years' imprisonment. Defendant appeals by right. We affirm.

Because the robbery occurred on January 12, 1999, defendant was correctly sentenced under the legislative sentencing guidelines. MCL 769.34(1) and (2); MSA 28.1097(3.4)(1) and (2). As scored below, defendant's sentence is appropriately within the sentencing range. However, defendant challenges the trial court's scoring of offense variable one (OV-1), aggravated use of a weapon, MCL 777.31; MSA 28.1274(41); offense variable two (OV-2), lethal potential of a weapon, MCL 777.32; MSA 28.1274(42); and offense variable fourteen (OV-14), being the leader of a multiple-offender situation, MCL 777.44; MSA 28.1274(54).

We will uphold a trial court's scoring of the guidelines where it is supported by the evidence. *People v Leversee*, __ Mich App __; __ NW2d __ (Docket #220571, issued 11/21/00), slip op p 6. In the instant matter, the testimony of the robbery victims provided sufficient evidence to support the trial court's conclusion that, at the very least, the primary victim was in reasonable apprehension of an imminent battery with the grease knife. Similarly, the evidence supported the trial court's conclusion that the knife was a potentially lethal weapon. Defendant's own testimony provided ample evidence indicating that he was the leader of the robbery, especially in light of the statutory directive to consider the totality of the criminal endeavor. MCL 777.44(2)(a); MSA 28.1274(54)(2)(a). After reviewing the entire record, we believe that the trial court's scoring in the instant matter was supported by the evidence. Accordingly, we find no scoring error. Our Legislature has mandated that, in the absence of a scoring error or

other factual inaccuracy, we must affirm a trial court's sentence that falls within the guidelines range. MCL 769.34(10); MSA 28.1097 (3-4)(10); *Leversee, supra*.

We affirm.

/s/ Michael J. Talbot

/s/ David H. Sawyer

/s/ Jane E. Markey