

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

MICHAEL TODD HAYES,

Defendant-Appellant.

UNPUBLISHED
February 22, 2002

No. 227641
Ingham Circuit Court
LC No. 00-075437-FH

Before: Smolenski, P.J., and Doctoroff and Owens, JJ.

MEMORANDUM.

Defendant appeals as of right his sentences of thirty-eight to 120 months and seventeen to forty-eight months imposed on his convictions of first-degree child abuse, MCL 750.136b(2), and second-degree child abuse, MCL 750.136b(3), respectively, entered after a jury trial. We affirm.

Defendant squeezed the two-month-old twin daughters of his fiancée when he became frustrated with their crying. His actions resulted in multiple and serious internal injuries to the girls. The harm inflicted on each child resulted in separate convictions. The applicable statutory sentencing guidelines recommended a minimum term range of twelve to twenty-four months for the conviction of first-degree child abuse, and zero to seventeen months for the conviction of second-degree child abuse. In each count Offense Variable (OV) 9, MCL 777.39, multiple victims, was originally scored at zero points for fewer than two victims. At sentencing, plaintiff argued that in each instance OV 9 should be scored at ten points for two to nine victims because two victims were placed in danger. The trial court agreed and changed the scoring of OV 9 to ten points for each conviction. This change increased the recommended minimum term range for the conviction of first-degree child abuse to nineteen to thirty-eight months. The recommended range for the conviction of second-degree child abuse remained the same. The trial court imposed concurrent terms as noted above, with credit for 107 days on each sentence.

Defendant argues that the trial court erred by scoring OV 9 at ten points for each conviction. We disagree and affirm defendant's sentences. Offense variable 9 considers the number of persons victimized, and is scored at ten points when there were two to nine victims. In *People v Chesebro*, 206 Mich App 468, 473; 522 NW2d 677 (1994), which interpreted OV 6,

multiple victims, of the judicial sentencing guidelines,¹ this Court held that the multiple victims offense variable pertains only to the circumstances of the crime for which the defendant is being sentenced. However, in *People v Johnson*, 202 Mich App 281, 289; 508 NW2d 509 (1993), this Court affirmed the scoring of OV 6 of the judicial sentencing guidelines at ten points for each of the defendant's two convictions of armed robbery resulting from a single criminal transaction in which two victims were robbed at the same time. The criminal transaction in *Chesebro, supra*, clearly involved only one victim, whereas the criminal transaction in *Johnson, supra*, involved two victims. Here, defendant was convicted of inflicting serious harm on two children who were in his care at the same time. Both children were placed in danger of injury at the same time. The evidence supported the trial court's scoring of OV 9 at ten points in each case, notwithstanding the fact that the harm inflicted on the children resulted in separate convictions. MCL 777.39(2)(a); *Johnson, supra*.

Affirmed.

/s/ Michael R. Smolenski

/s/ Martin M. Doctoroff

/s/ Donald S. Owens

¹ Offense variable 6 of the judicial sentencing guidelines instructed that "each person who was placed in danger of injury or loss of life" was to be considered a victim. This instruction is identical to the instruction for OV 9 of the statutory sentencing guidelines. MCL 777.39(2)(a).