

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

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

MICHAEL WALKER,

Defendant-Appellant.

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UNPUBLISHED

November 21, 2006

No. 262680

Wayne Circuit Court

LC No. 05-000727-01

Before: Whitbeck, C.J., and Sawyer and Jansen, JJ.

MEMORANDUM.

Defendant Michael Walker appeals as of right his jury trial conviction for first-degree home invasion.<sup>1</sup> The trial court sentenced Walker to 20 months to 20 years' imprisonment. We affirm.

Walker argues that offense variable (OV) 3 and OV 9 were incorrectly scored in his Presentence Information Report (PSIR). At sentencing, the trial court asked defense counsel if she had reviewed the PSIR, and counsel replied, "Yes, ma'am, and we believe the guidelines are correct, and I talked to [the prosecutor]. I think we're in agreement with the guidelines." Therefore, this issue is not properly before us because Walker's counsel waived appellate review of this argument by verbally assenting to the accuracy of the PSIR.<sup>2</sup>

Nevertheless, we note that we find no error in the scoring of OV 9 where there was evidence that at least two people were placed in danger of injury by Walker's home invasion.<sup>3</sup> And, although we agree with Walker that OV 3 was erroneously scored at five points when there

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<sup>1</sup> MCL 750.110a(2).

<sup>2</sup> *People v Carter*, 462 Mich 206, 208-209, 213-214; 612 NW2d 144 (2000).

<sup>3</sup> MCL 777.39(1)(c).

was no evidence that the complainant sustained any bodily injury,<sup>4</sup> rescoring for this error would not alter the applicable guidelines range. Thus, resentencing is not required.<sup>5</sup>

Affirmed.

/s/ William C. Whitbeck

/s/ David H. Sawyer

/s/ Kathleen Jansen

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<sup>4</sup> MCL 777.33(1)(e). See *People v Cathey*, 261 Mich App 506, 514; 681 NW2d 661 (2004) (stating that “bodily injury” is defined as “physical damage to a person’s body.”)

<sup>5</sup> *People v Houston*, 261 Mich App 463, 473; 683 NW2d 192 (2004).