

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

COREY STAFFORD SCALES,

Defendant-Appellant.

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UNPUBLISHED

November 28, 2006

No. 262791

Wayne Circuit Court

LC No. 01-013625-01

Before: White, P.J. and Zahra and Kelly, JJ.

PER CURIAM.

Defendant appeals as of right from his sentence of fifteen to thirty years' imprisonment for armed robbery, MCL 750.529. We affirm. This appeal is being decided without oral argument in accordance with MCR 7.214(E).

In connection with an incident dating from October 2001, for which a codefendant was also prosecuted, defendant was charged with first-degree murder, MCL 750.316(1), assault with intent to commit murder, MCL 750.83, and possession of a firearm during the commission of a felony, MCL 750.227b, along with armed robbery. The jury found defendant guilty of only armed robbery. The trial court exceeded the nine-to-fifteen-year recommended range for defendant's minimum sentence under the guidelines, and imposed a sentence of life in prison. On appeal, a panel of this Court agreed that the trial court erroneously sentenced defendant on the basis of an independent finding that he was guilty of murder, and remanded for resentencing before a different judge. *People v Scales*, unpublished per curiam opinion of the Court of Appeals, issued May 18, 2004 (Docket No. 246411).

Defendant's presentence investigation report was updated for resentencing, but the recommended range for the minimum sentence remained nine to fifteen years. Defendant's fifteen-year minimum on resentencing, then, fell at the upward limit of that range.

Defendant challenges that sentence on the ground that the sentencing court relied on information not reflected in the jury's verdict. Defendant relies on *Blakely v Washington*, 542 US 296; 124 S Ct 2531; 159 L Ed 2d 403 (2004), wherein the United States Supreme Court held that "every defendant has the *right* to insist that the prosecutor prove to a jury all facts legally essential to the punishment." *Id.* at 313 (emphasis in the original). However, our Supreme Court recently reiterated that "the Michigan system is unaffected by the holding in *Blakely* . . . ." *People v Drohan*, 475 Mich. 140, 164 quoting *People v Claypool*, 470 Mich 715, 730 n 14; 684

NW2d 278 (2004). The *Drohan* Court elaborated, “a defendant does not have the right to anything less than the maximum sentence authorized by the jury’s verdict, and, therefore, judges may make certain factual findings to select a specific minimum sentence from within a defined range.” *Id.* at 159. Defendant’s recourse to *Blakely*, *supra*, is thus unavailing. The sentencing court properly took into account all the facts and circumstances of the crime, as determined by the court from various sources. See *People v Potrafka*, 140 Mich App 749, 751-752; 366 NW2d 35 (1985).

Defendant also argues generally that certain Offense Variables were misscored, but does so only by noting that the findings behind them did not comport with the verdicts of not guilty in connection with the crimes other than armed robbery with which he was charged. Because, as stated above, factfinding for purposes of sentencing is not wholly derivative of the presentation of proofs at trial, *Potrafka*, *supra*, this argument has no merit.

Affirmed.

/s/ Helene N. White  
/s/ Brian K. Zahra  
/s/ Kirsten Frank Kelly