

STATE OF MICHIGAN
COURT OF APPEALS

IN RE DEONTE LAMONT ADAMS, Minor.

PEOPLE OF THE STATE OF MICHIGAN,

Petitioner-Appellee,

v

DEONTE LAMONT ADAMS,

Respondent-Appellant.

UNPUBLISHED

December 19, 2006

No. 266506

Wayne Circuit Court, Juvenile
Division

LC No. 03-422010-DL

Before: Meter, P.J., and O'Connell and Davis, JJ.

PER CURIAM.

Respondent, a minor, appeals as of right a portion of his sentence for assault with intent to commit great bodily harm less than murder, MCL 750.84. Respondent was tried as an adult and convicted by a jury. During the dispositional hearing, the trial court decided to delay imposition of the adult sentence pursuant to MCL 712A.18(1)(m). The court placed respondent on probation by committing him to the Wayne County Department of Community Justice. Respondent challenges the trial court's determination that his adult sentence¹ would be a term of 171 to 285 months in prison. We agree that the trial court erred in computing his sentencing range, so we reverse in part and remand for correction of the trial court's order. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Respondent was involved in the drive-by shooting of Fredrick Jackson. Jackson testified that he was walking with a friend and his cousin when a car approached him. Respondent was in the back seat behind the driver. Respondent asked why Jackson had been following him earlier that day. Jackson denied following respondent and continued to walk. A person in the car fired at Jackson multiple times, striking him once in the back. Jackson did not state who shot him but

¹ Respondent notes that he could receive a prison term should his probationary status be revoked. Respondent does not challenge the trial court's decision to delay his sentence and impose a term of probation.

testified that he heard respondent tell the shooter to fire before the shots were fired. Jackson's acquaintance substantiated Jackson's account of the shooting. The acquaintance further testified that he saw respondent hand a gun to someone in the front seat before the shooting.

Respondent challenges the trial court's scoring of several of his Offense Variable (OV) scores.² Respondent objected to each alleged scoring error at sentencing, and thus preserved these claims of error for appeal. MCL 769.34(10). A sentencing court has discretion with respect to the scoring of offense variables, provided that evidence of record supports a particular score. *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." *Id.*, quoting *People v Elliott*, 215 Mich App 259, 260; 544 NW2d 748 (1996). Statutory interpretation is reviewed de novo on appeal. *People v Lange*, 251 Mich App 247, 253; 650 NW2d 691 (2002).

Respondent first challenges the scoring of 25 points for OV 6, intent to kill or injure another individual. MCL 777.36. We agree that the trial court erred. MCL 777.22 provides in pertinent part:

(1) For all crimes against a person, score offense variables 1, 2, 3, 4, 7, 8, 9, 10, 11, 12, 13, 14, 19, and 20. Score offense variables 5 and 6 for homicide, attempted homicide, conspiracy or solicitation to commit a homicide, or assault with intent to commit murder.

Respondent's offense as charged is not among those listed for which the scoring of OV 6 is appropriate. The parties agree that the trial court erred when it scored 25 points for OV 6. The removal of these points reduces respondent's OV total score to 40. This change makes the correct minimum sentence range 10 to 23 months. MCL 777.65.

Respondent also argues that the trial court erred when it scored five points for OV 2. MCL 777.32. We disagree. Respondent argues that the trial court should have scored OV 2 at zero points because he did not have a weapon, and this does not qualify as a "multiple offender" case because no other person has been charged or tried for the shooting. However, respondent was convicted of the assault under an aiding and abetting theory. A person who is found guilty of aiding and abetting is convicted and punished as if he directly committed the offense. *People v Mann*, 395 Mich 472, 476; 236 NW2d 509 (1975); MCL 767.39. A witness testified that respondent possessed the weapon immediately before the assault. Respondent correctly notes that the instant facts do not involve a principal who has been "assessed" points for this offense. However, MCL 777.32(2) does not require that, in order to qualify as a "multiple offender" situation, all persons must be charged or tried at the same time.

Because the trial court erred in scoring OV 6 for this offense, and because the error, when corrected, changes the applicable sentencing scoring range, we reverse and remand for a

² The trial court correctly recognized that defendant's Prior Record Variable score of 12 points and his OV score of 65 points resulted in a minimum sentence range of 19 to 38 months, but the trial court mistakenly recited a minimum range of 171 to 285 months. This error would require correction regardless of our resolution of any other issue on appeal.

correction of respondent's order delaying sentence, as well as his sentencing information report, to reflect the correct guidelines scoring range.

Reversed and remanded. We do not retain jurisdiction.

/s/ Patrick M. Meter
/s/ Peter D. O'Connell
/s/ Alton T. Davis