

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JIMMY LAMAR ROBBINS,

Defendant-Appellant.

UNPUBLISHED
February 19, 2009

No. 280080
Wayne Circuit Court
LC No. 07-006012-01

Before: Borrello, P.J., and Davis and Gleicher, JJ.

PER CURIAM.

Defendant appeals as of right his bench trial convictions of second-degree home invasion, MCL 750.110a(3), and three counts of assault and battery, MCL 750.81. The trial court sentenced defendant as a fourth-habitual offender, MCL 769.12, to concurrent terms of 7 to 30 years' imprisonment for the home invasion conviction and 90 days in jail for each of the assault and battery convictions. We affirm.

I. Factual History

This appeal arises from defendant's home invasion of his mother's residence and an ensuing altercation involving defendant's sister and younger brothers. Defendant appeared at the front door of the home and accused his sister of stealing money from his wallet. When defendant's sister attempted to close the front door, defendant kicked in the door, knocked his sister to the floor, and repeatedly struck her about the face, injuring her. When defendant's 15-year-old brothers attempted to intervene, defendant struck one of them, knocking him to the floor. Defendant retrieved a knife from the kitchen and brandished it while verbally threatening to kill his brother.

Defendant left the residence and paced outside. When defendant's mother returned home, defendant approached her and pushed her on the porch stairs, causing her to fall. Defendant's mother initially remained on the ground and placed her foot on defendant's chest to impede his ability to strike her with his fist, which he had clenched and drawn back. Defendant's mother then successfully retreated inside the home and called the police.

At sentencing, defendant objected to the scoring of 10 points for offense variable (OV) 10. The trial court upheld the scoring, citing defendant's "continuous exploitation of the domestic relationship."

II. Standard of Review

This Court considers de novo issues involving the proper construction or application of the statutory sentencing guidelines, which are questions of law. *People v Hegwood*, 465 Mich 432, 436; 636 NW2d 127 (2001). In accordance with MCL 769.34(10), we must affirm a sentence that falls within the legislative guidelines range unless a scoring error exists or the trial court relied on inaccurate information. A sentencing court has discretion to determine the number of points to assign under a particular offense variable, “provided that evidence of record adequately supports a particular score.” *People v Hornsby*, 251 Mich App 462, 468; 650 NW2d 700 (2002). We will uphold a sentencing court’s scoring decision if any evidence in the record supports it. *People v Spanke*, 254 Mich App 642, 647; 658 NW2d 504 (2003).

III. Analysis

“The primary goal of statutory interpretation is to determine and give effect to the intent of the Legislature in enacting the provision.” *People v Althoff*, 280 Mich App 524, 535; ___ NW2d ___ (2008). “Every word or phrase of a statute should be accorded its plain and ordinary meaning, but if the legislative intent cannot be determined from the statute itself, dictionary definitions may be consulted.” *Id.*

OV 10 addresses the “exploitation of a vulnerable victim.” MCL 777.40(1). Pursuant to MCL 777.40(1)(b), a trial court may assess 10 points if “[t]he offender exploited a victim’s physical disability, mental disability, youth or agedness, or a *domestic relationship*, or the offender abused his or her authority status.” (Emphasis added). According to MCL 777.40(3),

(b) “Exploit” means to manipulate a victim for selfish or unethical purposes.

(c) “Vulnerability” means the readily apparent susceptibility of a victim to injury, physical restraint, persuasion, or temptation.

Because the statute does not define the term “domestic relationship,” we may consult a dictionary to ascertain the meaning of this term. *Althoff*, *supra* at 535. Random House Webster’s College Dictionary defines “domestic” as: “1. of or pertaining to the home, family, or household affairs. 2. devoted to home life.”

In light of these definitions, defendant cannot legitimately contest that the familial relationship between defendant and the various victims sufficiently established a domestic relationship.¹ Contrary to defendant’s suggestion, an assessment of 10 points under this variable does not require the existence of an additional factor, such as residence within the home. Defendant here plainly had a domestic relationship with the victims, who comprised members of his immediate family. Although defendant did not reside in the home, he did sporadically spend time at the residence. Furthermore, the testimony by the various victims reflects that defendant

¹ Defendant appears to confuse the elements pertaining to permission for entry for home invasion with the “domestic relationship” factor for the scoring of OV 10.

acted to exploit this relationship by forcing entry into the home and demanding that they return allegedly stolen money. When defendant's sister denied the theft allegation, he threatened and assaulted her. Consequently, ample evidence supported the trial court's finding that defendant's actions constituted an attempt to manipulate his sister for his own "selfish" purpose of obtaining money.

In summary, because evidence in the record substantiated the trial court's determination that defendant exploited a domestic relationship, we must uphold the court's assessment of 10 points for OV 10. *Spanke, supra* at 647. And because defendant's sentence falls within the appropriate guidelines range and no scoring error exists, we affirm defendant's sentence. MCL 769.34(10).

Affirmed.

/s/ Stephen L. Borrello
/s/ Alton T. Davis
/s/ Elizabeth L. Gleicher