

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

CORDARRELL ISIAH SIMS,

Defendant-Appellant.

UNPUBLISHED

February 15, 2011

No. 292529

Macomb Circuit Court

LC No. 2008-000791-FC

Before: WILDER, P.J., and SERVITTO and SHAPIRO, JJ.

SHAPIRO, J. (*concurring*).

I concur with the majority opinion as to the guideline scoring issues and the remand for resentencing. I write separately to address the issue of the consecutive sentences imposed for home invasion and conspiracy to commit home invasion.

Defendant was convicted, by guilty plea, of home invasion, conspiracy to commit home invasion, and assault with intent to do great bodily harm. The circumstances of this home invasion were extremely disturbing and involved children witnessing the beating of their mother by someone their family had treated as a friend. I agree that a minimum sentence at the top of the guidelines for home invasion, i.e. 140 months was proper. I also agree that given the circumstances of the crime, the trial court properly exercised its discretion in ordering that sentence be served consecutive to the 67 month minimum imposed for the assault with intent to commit great bodily harm committed during the home invasion.

I believe, however, that the trial court erred in ordering that the 140 month minimum sentence for conspiracy to commit home invasion be served consecutive to the home invasion sentence. The home invasion statute provides that “the court may order a term of imprisonment imposed for home invasion in the first degree to be served consecutively to any term of imprisonment imposed for any other criminal offense arising from the same transaction.” MCL 750.110a(8). While this can arguably be read to include conspiracy to commit home invasion, I would conclude that the Legislature’s intent was to allow a court to impose a consecutively served punishment for crimes committed during the home invasion, such as assault or robbery, rather than a consecutive sentence merely for having planned the home invasion itself. As we stated in *People v Hill*, 221 Mich App 391, 394; 561 NW2d 862 (1997), “[t]he home invasion statute permits consecutive sentencing when another felony occurs *during [the] home invasion*

(emphasis added).” I am unaware of any case in which our Court approved, or even considered, the propriety of a court imposing consecutive sentences for home invasion and for conspiracy to commit home invasion. Further, I am concerned that applying the statute in such a fashion would undercut the Legislature’s determination that the maximum sentence for home invasion is 20 years. Such a reading of the statute would permit any defendant who acted in concert with another in perpetrating a home invasion to be sentenced to a maximum term of 40 years even if no other crime was committed. I cannot conclude that, by adopting MCL 750.110a(8), the Legislature intended to wholly undo MCL 750.110a(5) in every case where two criminal actors get together commit a home invasion.

Accordingly, on remand I would direct that the sentence imposed for conspiracy to commit home invasion be served concurrently with the sentence imposed for home invasion.

/s/ Douglas B. Shapiro