

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

BRANDON JASON FLAKES,

Defendant-Appellant.

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UNPUBLISHED

June 14, 2011

No. 295824

Kent Circuit Court

LC No. 09-002817-FC

Before: SHAPIRO, P.J., and O'CONNELL and OWENS, JJ.

MEMORANDUM.

Following a jury trial, defendant appeals as of right his sentence arising from convictions of first-degree home invasion, MCL 750.110a(2); conspiracy to commit first-degree home invasion, MCL 750.157a; possession of a firearm during the commission of a felony, MCL 750.227b; two counts of armed robbery, MCL 750.529; and two counts of conspiracy to commit armed robbery, MCL 750.157a. We affirm.

Defendant argues that insufficient evidence supported the trial court's scoring of offense variable (OV) 4 (serious psychological injury to victim). MCL 777.34. Defendant further contends that his sentence was a departure from the recommended minimum sentencing range, and that a remand for resentencing is required. See MCL 769.34(11). We disagree.

We review the trial court's scoring decisions "for an abuse of discretion to determine whether the evidence adequately supports a particular score." *People v Apgar*, 264 Mich App 321, 329; 690 NW2d 312 (2004). "Scoring decisions for which there is any evidence in support will be upheld." *People v Endres*, 269 Mich App 414, 417; 711 NW2d 398 (2006), quoting *People v Elliott*, 215 Mich App 259, 260; 544 NW2d 748 (1996).

OV 4 is scored at ten points where a victim suffers serious psychological injury requiring professional treatment. MCL 777.34(1)(a). The OV 4 statute does not require proof that the victim actually sought treatment. MCL 777.34(2); *Apgar*, 264 Mich App at 329. Further, a victim's fear during a crime can support the scoring of OV 4. *Apgar*, 264 Mich App at 329. In *Apgar*, the defendant raped the victim while he held a "knife-like object to her throat and threatened to kill her if she did not do as he said." *Id.* at 324. The victim testified she was fearful during the encounter, and this Court upheld the trial court's scoring decision on OV 4. *Id.* at 329.

The record demonstrates that defendant invaded Dreama and Curtis Parker's home and robbed them at gun point. Defendant threatened to kill the Parkers, threatened to kill their son, and held a gun against their heads. Curtis testified that he thought he was going to die. A first responder testified that Dreama was shrieking, yelling, screaming, and was very distraught and very emotional. This evidence was sufficient to allow the trial court to conclude that the Parkers suffered serious psychological injury requiring professional treatment. Because the evidence supports the 10-point score for OV 4, we must uphold the scoring decision. *Elliott*, 215 Mich App at 260.

Affirmed.

/s/ Douglas B. Shapiro

/s/ Peter D. O'Connell

/s/ Donald S. Owens