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STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

MARVELL MAURICE JACKSON,

Defendant-Appellant.

UNPUBLISHED
October 22, 2020

No. 349197
Saginaw Circuit Court
LC No. 18-044873-FH

Before: STEPHENS, P.J., and SAWYER and BECKERING, JJ.

PER CURIAM.

A jury convicted defendant, Marvell Maurice Jackson, of felon in possession of a firearm (felon-in-possession), MCL 750.224f, and possessing a firearm during the commission of a felony (felony-firearm), second offense, MCL 750.227b.[1] The trial court sentenced defendant as a fourth-offense habitual offender, MCL 769.12, to 20 months to 10 years' imprisonment for the felon-in-possession conviction and to a mandatory consecutive term of five years' imprisonment for the felony-firearm conviction. Defendant appeals by right, challenging the trial court's assessment of 10 points for offense variable (OV) 19 (interference with administration of justice). We affirm the trial court's sentence.

I. RELEVANT FACTS

Early on the evening of February 2, 2018, law enforcement officers were dispatched to an apartment complex on Birch Park Drive in Saginaw to investigate a "shots-fired" report. Several callers reported that a black male wearing a black winter coat was firing off a gun in the complex; he was one of a group of four black males. Four Michigan State Police Troopers, a Saginaw City Police officer, and a Michigan State Police helicopter unit converged on the apartment complex. The officers located the suspects and ordered them to stop and to take their hands out of their pockets. Two troopers testified at defendant's trial that they saw defendant drop several items on

[1] The jury acquitted defendant of carrying a concealed weapon, MCL 750.227.

the ground before turning to face the officers; among the items was a .22-caliber handgun. In response to questions from one of the troopers, defendant initially denied having dropped anything.[2] He later conceded that he had dropped a cell phone, but consistently denied that he had dropped a firearm. As indicated, a jury convicted defendant of felon-in-possession and felony-firearm.

At the sentencing hearing, the prosecution asked the trial court to assess 10 points for OV 19 on the ground that defendant attempted to interfere with the administration of justice by dropping the handgun he was carrying and then lying about it to police. The prosecution characterized defendant's conduct as an attempt to conceal the gun and to avoid the consequences of being found a felon in unlawful possession of a firearm. Defense counsel argued that no caselaw suggested that defendant's dropping the handgun rose to the level of interference with the administration of justice. Persuaded by the prosecution's argument, the trial court assessed 10 points for OV 19, resulting in a minimum sentencing guidelines range of 10 to 46 months. The court sentenced defendant as previously indicated. This appeal followed.

II. OV 19

On appeal, defendant argues that the trial court erred by assessing 10 points for OV 19. We disagree.

"Under the sentencing guidelines, the circuit court's factual determinations are reviewed for clear error and must be supported by a preponderance of the evidence." *People v Hardy*, 494 Mich 430, 438; 835 NW2d 340 (2013). "A sentencing court may consider all record evidence before it when calculating the guidelines, including, but not limited to, the contents of a presentence investigation report, admissions made by a defendant during a plea proceeding, or testimony taken at a preliminary examination or trial." *People v Johnson*, 298 Mich App 128, 131; 826 NW2d 170 (2012) (quotation marks and citation omitted). "Clear error exists when the reviewing court is left with a definite and firm conviction that a mistake was made." *People v Brooks*, 304 Mich App 318, 319-320; 848 NW2d 161 (2014) (quotation marks and citation omitted). Whether the facts, as found, are adequate to satisfy the scoring conditions prescribed by statute, i.e., the application of the facts to the law, is a question of statutory interpretation, which this Court reviews de novo. *Hardy*, 494 Mich at 438.

MCL 777.49 instructs trial courts to assess 10 points for OV 19 if the defendant "interfered with or attempted to interfere with the administration of justice." MCL 777.49(c). "Our Supreme Court has determined that the phrase 'interfered with or attempted to interfere with the administration of justice' is broader than the concept of obstruction of justice and that conduct subject to scoring under OV 19 'does not have to necessarily rise to the level of a chargeable offense . . . .' " *People v Passage*, 277 Mich App 175, 179-80; 743 NW2d 746 (2007), quoting *People v Barbee*, 470 Mich 283, 287; 681 NW2d 348 (2004). "[I]nterfering with a police officer's attempt to investigate a crime constitutes interference with the administration of justice." *Passage*,

[2] Defendant had been read and waived his *Miranda* rights. See *Miranda v Arizona*, 384 US 436; 86 S Ct 1602; 16 L Ed2d 694 (1966).

277 Mich App at 180; see also *People v Sours*, 315 Mich App 346, 349; 890 NW2d 401 (2016) ("OV 19 is generally scored for conduct that constitutes an attempt to avoid being caught and held accountable for the sentencing offense."). Conduct that has been held to warrant a 10-point OV 19 score includes giving a false name to police, *Barbee*, 470 Mich at 288, hiding from the police, *People v Smith*, 318 Mich App 281, 286; 897 NW2d 743 (2016), and wiping down the knife used to stab someone, asking a companion to dispose of it, and asking others to lie about the perpetrator's whereabouts on the night of the crime, *People v Ericksen*, 288 Mich App 192, 204; 793 NW2d 120 (2010).

In the case at bar, after being alerted to the presence of police at the scene, defendant dropped several items, including a gun, a cell phone, and a glove.[3] When initially confronted, defendant said that he did not drop anything; however, when pressed, he admitted to dropping only the cell phone. From the evidence that defendant dropped the gun and then lied to the officers about it, it can be inferred that defendant was trying to deceive the officers in an attempt to avoid being held accountable for the offenses with which he was ultimately charged.

Defendant argues that 10 points were not warranted because he did not give a false name to police or attempt to flee. Contrary to defendant's assumption, the critical question is the purpose of the conduct rather than the type of conduct; any conduct designed to "avoid being caught and held accountable for the sentencing offense" generally supports an assessment of points under OV 19. *Sours*, 315 Mich App at 349. Giving police a false name and fleeing from police are simply two specific examples of conduct that may be designed to deceive police and avoid being caught and prosecuted, and thus warrant assessing points under OV 19. See also *Smith*, 318 Mich App at 286; *Ericksen*, 288 Mich App at 204. Defendant also contends that, because the officers saw him drop the gun, there was no need to investigate and, therefore, no investigation with which defendant could have interfered. This argument is without merit. The fact that officers saw defendant drop the weapon has no bearing on the fact that defendant attempted to deceive the police by this action. Further, the officer specifically asked defendant if he dropped the gun. The only purpose of this question was to gather information related to a possible crime, which is an investigation.[4] Defendant's false answers to the questions constitute interference with that investigation. See *Barbee*, 470 Mich at 287.

Affirmed.

/s/ Cynthia Diane Stephens
/s/ David H. Sawyer
/s/ Jane M. Beckering

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[3] A matching glove was found on defendant's person.

[4] An investigation is "[t]he activity of trying to find out the truth about something, such as a crime, accident, or historical issue[.]" *Black's Law Dictionary* (10th ed).