

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

SEAN WILLIAM QUIGLEY,

Defendant-Appellant.

UNPUBLISHED

January 28, 2021

No. 352617

Wayne Circuit Court

LC No. 13-009245-01-FC

Before: JANSEN, P.J., and SERVITTO and RIORDAN, JJ.

PER CURIAM.

Defendant appeals as of right his jury trial convictions of kidnapping, MCL 750.349(1)(b), making a terrorist threat or a false report of terrorism, MCL 750.543m, and making a false report of a bomb threat, MCL 750.411a(2)(b). We affirm.

I. FACTUAL AND PROCEDURAL BACKGROUND

This case returns to us for the third time. This Court previously summarized the facts of this case as follows:

This case arises from defendant’s misguided attempt to have law enforcement check on his friend, Sarah Mazue, because he feared for her safety. After being unable to reach Mazue by phone for a time, defendant became convinced that she had become a victim of human trafficking or forced prostitution. He sought assistance from the Westland Police Department, the Federal Bureau of Investigation, and the Department of Homeland Security, all to no avail. Defendant then went to the Westland City Hall and held the mayor’s executive secretary, Shannon Ackron, as a hostage until she escaped several hours later. Defendant told Ackron and others that he had a bomb and would detonate it if his demands were not met. After defendant surrendered, police officers discovered that he had only a small flashlight and a cellular telephone charger, not a bomb. [*People v Quigley*, unpublished per curiam opinion of the Court of Appeals, issued January 19, 2016 (Docket No. 322482) (*Quigley I*), p 1.]

As this Court explained during defendant's second appeal,

On [defendant's first] appeal, this Court vacated defendant's conviction for terrorism, concluding that the kidnapping offense could not properly serve as the predicate felony for terrorism because it did not constitute a violent felony for purposes of Michigan's Anti-Terrorism Act, MCL 750.543b(a)(i) and (h). [*Quigley I*, unpub op at 5.] We further held that the 25 point score for OV 9, addressing the number of victims, and the 100 point score for OV 20, addressing the mechanism of terrorism and whether an act or threat occurred, were improperly scored. *Id.* at 8-11. Finally, the case was remanded for a determination of the appropriate amount of restitution, if any, because of the disparity between the amount ordered by the court and the amount delineated in the presentence investigation report (PSIR).

On remand, defendant was resentenced by a successor judge. The updated PSIR erroneously advised the trial court that defendant's convictions for both terrorism and kidnapping were reversed on appeal. However, our decision only vacated the conviction for terrorism and the kidnapping conviction remained intact. Yet, this error was not corrected by the parties; both defendant and the prosecutor submitted that the kidnapping conviction was reversed on appeal. At the request of the prosecutor, the trial court scored OV 12, contemporaneous criminal acts, at five points, and OV 20, addressing the mechanism and act or threat of terror, at 100 points. The trial court then resentenced defendant to 10 to 20 years' imprisonment for the making a terrorist threat or false report of terrorism conviction, and two to four years' imprisonment for the making a false report of a bomb threat conviction.

Defendant filed [a second] claim of appeal, challenging the scores for OV 12 and 20 and submitting that the sentence imposed was unreasonable and disproportionate. In response, the prosecutor filed a confession of error, agreeing that OV 12 and OV 20 were improperly scored and agreeing that a remand for resentencing was warranted. This Court rejected the prosecutor's confession of error, noting that the issues raised by defendant warranted plenary review. *People v Quigley*, unpublished order of the Court of Appeals, entered February 28, 2019 (Docket No. 343751). The prosecutor subsequently filed a brief on appeal, again agreeing to the relief requested regarding OV 12 and 20, and also addressing the need to resentence defendant for the kidnapping conviction. [*People v Quigley*, unpublished per curiam opinion of the Court of Appeals, issued August 13, 2019 (Docket No. 343751) (*Quigley II*), p 2.]

This Court concluded that on remand, defendant was improperly resentenced on the basis of inaccurate information. *Id.* at 2. Thus, this Court again remanded for resentencing. *Id.* at 6.

On remand, defendant was resentenced by a second successor judge, within the minimum sentencing guidelines range, to 70 months to 20 years' imprisonment for kidnapping, 70 months to 20 years' imprisonment for making a terrorist threat or false report of terrorism, and two to four years' imprisonment for making a false report of a bomb threat. This appeal followed.

II. STANDARD OF REVIEW

Defendant argues on appeal that despite the presumption of proportionality that comes with a minimum sentence that falls within the minimum guidelines sentencing range, as defendant's sentence does, the trial court abused its discretion by sentencing defendant at the top of the guidelines.

This Court reviews whether a trial court imposed a proportionate sentence for an abuse of discretion. *People v Steanhouse*, 500 Mich 453, 459-460; 902 NW2d 327 (2017). A trial court abuses its discretion when the sentence imposed is not proportionate to the circumstances surrounding the offense and the offender. *Id.* at 636. If the trial court imposes a sentence that falls within the appropriate minimum sentencing guidelines range, we presume that sentence is proportionate. *People v Milbourn*, 435 Mich 630, 658; 461 NW2d 1 (1990), abrogated in part on other grounds *Steanhouse*, 500 Mich at 474-475. We must affirm a sentence if it falls within the minimum sentencing guidelines range, absent any error in scoring or reliance by the trial court on inaccurate information. *People v Schrauben*, 314 Mich App 181, 196 n 1; 886 NW2d 173 (2016).

III. ANALYSIS

As defendant concedes, the trial court sentenced him within the applicable minimum sentencing guidelines range to 70 months to 20 years' imprisonment for his kidnapping and terrorist threat or false report of terrorism convictions. Indeed, at his final sentencing hearing, defense counsel requested the trial court sentence defendant within the calculated guidelines range, and the trial court honored that request. "A party cannot request a certain action of the trial court and then argue on appeal that the action was error." *People v McCray*, 210 Mich App 9, 14; 533 NW2d 359 (1995). Moreover, defendant has not asserted that there was any error in scoring the guidelines, or that the trial court relied on inaccurate information at sentencing. Thus, we are compelled to affirm. MCL 769.34(10).

Affirmed.

/s/ Kathleen Jansen
/s/ Deborah A. Servitto
/s/ Michael J. Riordan