

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

RICHARD DAMIEN OSBORNE,

Defendant-Appellant.

UNPUBLISHED
February 14, 2013

No. 307054
Kent Circuit Court
LC No. 10-010055-FC

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

MEMORANDUM.

Defendant, Richard Damien Osborne, pleaded guilty to first-degree criminal sexual conduct, MCL 750.520b(1)(a). The trial court sentenced him to 70 months to 21 years' imprisonment. Defendant filed a delayed application for leave to appeal, which this Court denied. *People v Osborne*, unpublished order of the Court of Appeals, entered January 9, 2012 (Docket No. 307054). Defendant then filed an application for leave to appeal to the Supreme Court; in lieu of granting leave to appeal, the Court remanded to this Court for consideration as on leave granted. *People v Osborne*, ___ Mich ___, 820 NW2d 505 (2012). We affirm.

On appeal, defendant challenges the trial court's scoring of offense variable (OV) 9, MCL 777.39 (number of victims), at ten points; OV 11, MCL 777.41 (criminal sexual penetration), at 25 points; and OV 13, MCL 777.43 (continuing pattern of criminal behavior) at 25 points. We conclude, however, that defendant has waived review of these scoring challenges. Our Supreme Court has held that "a defendant waives appellate review of a sentence that exceeds the guidelines by understandingly and voluntarily entering into a plea agreement to accept that specific sentence." *People v Wiley*, 472 Mich 153, 154; 693 NW2d 800 (2005); cf. *People v Price*, 477 Mich 1, 3-6 & n 1; 723 NW2d 201 (2006) (rejecting the argument that the defendant waived any objection to the improperly scored guidelines under *Wiley* and ordering resentencing where the defendant only generally agreed to a sentence within the guidelines range however the trial court ultimately calculated it, as opposed to an agreement for a specific sentence). In the present case, defendant understandingly and voluntarily entered into a plea agreement for a specific minimum-sentence range of 42 to 70 months' imprisonment. In exchange, the prosecution agreed that it would not pursue "other charges related to this case

against the defendant.” The 70-month minimum sentence imposed by the trial court was consistent with the plea agreement. Defendant received the exact sentence that he bargained for and to which he agreed. “A bargain is indeed a bargain.”¹ *People v Blount*, 197 Mich App 174, 175; 494 NW2d 829 (1992). Accordingly, defendant waived appellate review of his sentence. See *Wiley*, 472 Mich at 154; see also generally *People v Cobbs*, 443 Mich 276, 285 & n 11; 505 NW2d 208 (1993) (explaining that a defendant who pleads guilty with knowledge of the sentence—either from a sentence bargain, prosecutorial recommendation, or a judge’s statement of the sort discussed in *Cobbs*—must be expected to be denied appellate relief on the ground that the plea demonstrates the defendant’s agreement that the sentence is proportionate); *People v Vitale*, 179 Mich App 420, 422; 446 NW2d 504 (1989) (“The trial court accepted defendant’s plea and sentenced him under a sentence recommendation to which he agreed. Why should defendant now be heard to complain? It seems pointless to remand such a case to the trial court. Here, where the prosecution and defendant agreed to the minimum sentence imposed, what are we to review and what are we to demand of the trial court? In sum, the defendant’s prayers were answered, reminding us of the wisdom of St. Theresa of Avila who said: ‘More tears are shed over answered prayers than unanswered ones.’”).

Affirmed.

/s/ Jane M. Beckering
/s/ Cynthia Diane Stephens
/s/ Mark T. Boonstra

¹ As noted in *Wiley*, that defendant benefitted from the bargain struck is implicit:

“It is fully understandable under the circumstances of a plea agreement why a defendant would waive appellate review of such a sentence, because it is implicit in every plea agreement that the defendant has derived some benefit from the agreement, otherwise it would not have been entered into. However, there is no obligation upon the sentencing court to identify the reasons underlying the defendant’s acceptance of the plea agreement....” [*Wiley*, 472 Mich at 154 n 1.]