STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED February 14, 2013
v	No. 308925 Berrien Circuit Court
ERIC YVONNE WILLIAMS, Defendant-Appellant.	LC No. 2011-003514-FH

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

PER CURIAM.

A jury convicted defendant, Eric Yvonne Williams, of maintaining a drug house, MCL 333.7405(d), and possession of marijuana, MCL 333.7403(2)(d). The trial court sentenced defendant as a subsequent offender under the controlled substances act, MCL 333.7413(2), to 20 to 48 months' imprisonment for maintaining a drug house and 180 days in jail for marijuana possession. Defendant appeals as of right. We affirm.

I. BASIC FACTS

Defendant's convictions arise out of events that took place on August 17, 2011, at 790 Edgecumbe in Benton Harbor, Michigan. During the preceding two weeks, confidential informants for the Narcotics Division of the Berrien County Sherriff's Department made three "controlled purchases" of marijuana at the above residence. On August 17, several members of the narcotics division executed a search warrant. As the officers approached the residence, several individuals, including defendant, were standing in the front yard. One of the individuals dropped a bag of marijuana next to a tree in the yard. Others were arrested on outstanding warrants. Defendant was detained as he attempted to leave the premises, whereafter he was searched and handcuffed. Officers found $402 in cash in defendant's pockets; among the bills was a twenty dollar bill that was identified as one used in the last controlled purchase at the residence.

Inside the residence, officers secured two individuals on the main floor: defendant's mother and her boyfriend, Larry Sims, Jr. At trial, witnesses described 790 Edgecumbe as a one-story house with a basement. The main floor had a dining room and two bedrooms. In the dining room, officers found and collected an ashtray and at least one partially burned marijuana cigarette. In the southwest bedroom, officers found a marijuana pipe, a digital scale, and "residency papers" belonging to Sims. Sims testified that he shared this bedroom with

defendant's mother and that the scale and marijuana pipe in the bedroom belonged to him. Sims also claimed ownership of the marijuana found in the dining room.

In the southeast bedroom, officers found three partially burned marijuana cigarettes, a suitcase containing defendant's clothing, and his "Michigan temporary instruction permit" with an expiration date of November 16, 2011, that listed his address as 790 Edgecumbe.

In the basement, officers found a large table with "marijuana, a scale, and packaging material for distribution of marijuana." Specifically, officers collected "[t]wo boxes of sandwich baggies, empty baggies, and the marijuana, and also a digital scale with marijuana residue on it" from the table. Officers also found residency papers containing defendant's name and the 790 Edgecumbe address next to the marijuana packaging material on the table. Inside the top drawer of a nightstand in the basement, officers found and collected "a Michigan ID for [] defendant" with the 790 Edgecumbe address, one of defendant's paycheck stubs from Walmart[1], and a cigar wrapper that contained 41 "marijuana blunt roaches." Officers also found defendant's identification tag from Walmart and a large quantity of male clothing in various places throughout the basement.

At trial, defendant argued that he did not reside at 790 Edgecumbe and, therefore, that he had no control over the residence and was unaware of any marijuana at the residence. Defendant's mother and Sims testified that defendant did not live at the address and did not have a key. They also testified that Doneal Wright, Sims's nephew, lived in the basement and that the basement was a private area for Wright to use. Defendant's mother testified that defendant brought the suitcase of clothing found in the upstairs bedroom over for her to wash. However, she also testified that defendant was welcome at her home at any time and that he had access to any room in her home except her bedroom. Sims testified that defendant came to the residence every day. Additionally, Roger Johnson, a detective with the narcotics division who interviewed defendant's mother and Sims during the execution of the search warrant, testified that defendant's mother told him that defendant "had been staying" at the residence. Johnson also testified that Sims stated that defendant had been living with them for one or two months and that defendant stayed in the southeast bedroom on the main floor. [2]

[1] Defendant was employed at Walmart at the time of his arrest.

[2] After defendant was searched on August 17, he claimed that he did not live at 790 Edgecumbe. He told officers that he lived with his girlfriend at 1934 Territorial Avenue, Apartment One, which is located in Cogic Village Apartments. Kim Hunt, Cogic Village Apartments' property manager, testified at trial that the leasing record was devoid of any indication that defendant ever lived at that apartment. Further, she testified that, because the apartment complex is income based, the leasing office must be informed of all persons residing in an apartment and that failure to do so results in an automatic eviction.

II. SUFFICIENCY OF THE EVIDENCE

Defendant challenges the sufficiency of the evidence supporting his conviction of maintaining a drug house. "We review de novo a challenge on appeal to the sufficiency of the evidence." *People v Ericksen*, 288 Mich App 192, 195; 793 NW2d 120 (2010). When evaluating the claim, "we construe the evidence in a light most favorable to the prosecution and consider whether there was sufficient evidence to justify a rational trier of fact in finding that all the elements of the crime were proved beyond a reasonable doubt." *People v Phelps*, 288 Mich App 123, 131-132; 791 NW2d 732 (2010).

The crime of maintaining a drug house is governed by MCL 333.7405(d), which states that a person

> [s]hall not knowingly keep or maintain a store, shop, warehouse, dwelling, building, vehicle, boat, aircraft, or other structure or place, that is frequented by persons using controlled substances in violation of this article for the purpose of using controlled substances, or that is used for keeping or selling controlled substances in violation of this article.

"The phrase 'keep or maintain' implies usage with some degree of continuity that can be deduced by actual observation of repeated acts or circumstantial evidence . . . that conduces to the same conclusion." *People v Thompson*, 477 Mich 146, 155; 730 NW2d 708 (2007). "[I]t is not necessary to own or reside at [the drug house], but simply to exercise authority or control over the property for purposes of making it available for keeping or selling proscribed drugs." *People v Griffin*, 235 Mich App 27, 32; 597 NW2d 176 (1999), overruled in part on other grounds *Thompson*, 477 Mich at 148.

Here, the evidence was sufficient for a rational trier of fact to find that defendant exercised dominion and control over the residence for use in the "keeping or selling" of controlled substances with "some degree of continuity." MCL 333.7405(d); *Thompson*, 477 Mich at 155. Specifically, several of defendant's belongings were found next to marijuana located in the southeast bedroom and basement, including three pieces of identification that listed defendant's address as 790 Edgecumbe. Residency papers linking defendant to the address were found next to the marijuana packaging material and the digital scale on the table in the basement. His Michigan ID was found inside the top drawer of a night stand, which also contained 41 "marijuana blunt roaches." At the time of the August 17 search, one of the people on the lawn with defendant was holding a bag of marijuana. Additionally, officers observed three controlled purchases at the residence and found $20 used in a controlled purchase in defendant's right rear pocket. Therefore, viewing the evidence in a light most favorable to the prosecution, a rational jury could have found that the elements of maintaining a drug house were proven beyond a reasonable doubt.

Defendant also argues that there was insufficient evidence to convict him of marijuana possession. We conclude, however, that this issue is abandoned because it was not properly set forth in defendant's statement of the question presented. See *People v Albers*, 258 Mich App 578, 584; 672 NW2d 336 (2003); see also MCR 7.212(C)(5). Nonetheless, there was more than enough record evidence for the jury to find beyond a reasonable doubt that defendant was in

possession of marijuana. See *People v McKinney*, 258 Mich App 157, 166; 670 NW2d 254 (2003) (explaining that possession may be actual or constructive and joint or exclusive and that the essential issue is whether the defendant exercised dominion or control over the substance).

III. SCORING OF PRV 6

With regard to his sentencing, defendant contends that the trial court erroneously assessed ten points under prior record variable (PRV) 6, MCL 777.56 (relationship to criminal justice system), because he was on federal supervised release, not on probation or parole, at the time he committed the charged offenses. This issue is not preserved because defendant did not raise it at sentencing, in a motion for resentencing, or in a motion to remand filed with this Court. See *People v Kimble*, 470 Mich 305, 312; 684 NW2d 669 (2004); see also MCL 769.34(10).

Maintaining a drug house, the sentencing offense in this case, is a class G offense. MCL 777.13m. The trial court assessed defendant a total offense variable (OV) score of 5 points and a total PRV score of 57 points. Falling within OV level I and PRV level E, defendant's recommended minimum-sentence range under the legislative guidelines for the class G felony was 0 to 17 months. See MCL 777.68. And, his statutory maximum sentence was 24 months. See MCL 777.13m. However, because defendant was a subsequent offender under the controlled substances act, the trial court exercised its discretion under MCL 333.7413(2) to double defendant's statutory minimum and maximum sentences. See generally *People v Williams*, 268 Mich App 416, 427-428; 707 NW2d 624 (2005) (explaining that, under MCL 333.7413(2), "a sentencing court can double both the statutorily allowed maximum sentence and any statutory minimum sentence"). Thus, defendant's statutory maximum was 48 months, and his minimum range was enhanced to 0 to 34 months. Absent the ten points that the trial court scored for PRV 6, defendant's total PRV score would be reduced to 47 points. Defendant, therefore, would remain at OV level I, but his PRV level would be reduced to PRV level D. See MCL 777.68. His resulting minimum-guidelines range would be 0 to 11 months. See MCL 777.68. Pursuant to MCL 333.7413(2), defendant's minimum-guidelines range would be raised to 0 to 22 months, and his statutory maximum sentence would remain at 48 months.

MCL 769.34(10) states the following:

> If a minimum sentence is within the appropriate guidelines sentence range, the court of appeals shall affirm that sentence and shall not remand for resentencing absent an error in scoring the sentencing guidelines or inaccurate information relied upon in determining the defendant's sentence. *A party shall not raise on appeal an issue challenging the scoring of the sentencing guidelines or challenging the accuracy of information relied upon in determining a sentence that is within the appropriate guidelines sentence range unless the party has raised the issue at sentencing, in a proper motion for resentencing, or in a proper motion to remand filed in the court of appeals.* [Emphasis added.]

In *Kimble*, our Supreme Court explained the effect of MCL 769.34(10), opining as follows:

> [P]ursuant to § 34(10), a sentence that is outside the appropriate guidelines sentence range, for whatever reason, is appealable regardless of whether the issue

> was raised at sentencing, in a motion for resentencing, or in a motion to remand. However, if the sentence is within the appropriate guidelines sentence range, it is only appealable if there was a scoring error or inaccurate information was relied upon in determining the sentence *and* the issue was raised at sentencing, in a motion for resentencing, or in a motion to remand. [*Kimble*, 470 Mich at 310-311 (emphasis added).]

Our Supreme Court reiterated this point in *People v Francisco*, 474 Mich 82, 90 n 8; 711 NW2d 44 (2006), stating the following:

> Finally, if the defendant failed to raise the scoring error at sentencing, in a proper motion for resentencing, or in a proper motion to remand filed in the Court of Appeals, and the defendant's sentence is within the appropriate guidelines range, the defendant cannot raise the error on appeal except where otherwise appropriate, as in a claim of ineffective assistance of counsel.

As previously discussed, the trial court in the present case sentenced defendant to a term of 20 to 48 months' imprisonment. And, defendant did not raise his scoring challenge at sentencing, in a motion for resentencing, or in a motion to remand filed with this Court. Assuming that PRV 6 should be scored at zero points and, therefore, that the appropriate guidelines range is 0 to 22 months as defendant insists, defendant's minimum 20-month sentence still falls within the appropriate guidelines range of 0 to 22 months. Accordingly, absent an ineffective assistance of counsel claim, MCL 769.34(10) as construed in *Kimble* and *Francisco* dictates that defendant's sentence is not appealable.[3] See *id.*; *Kimble*, 470 Mich at 310-311. Although defendant cited in his brief the standard of review for ineffective assistance of counsel claims, he neither properly set forth the issue in his statement of the question presented nor argued the merits of such claim in his brief. As such, any such claim is abandoned. See *Albers*, 258 Mich App at 584; *People v Kent*, 194 Mich App 206, 209-210; 486 NW2d 110 (1992); MCR 7.212(C)(5).

Affirmed.

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

[3] Review of defendant's unpreserved challenge to the scoring of PRV 6 would be for plain error if defendant's statutory minimum sentence fell outside the appropriate guidelines range. See *Kimble*, 470 Mich at 312.