

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JAMES EDWARD JONES,

Defendant-Appellant.

UNPUBLISHED

June 4, 2013

No. 309917

Ingham Circuit Court

LC No. 11-000573-FC

Before: HOEKSTRA, P.J., and TALBOT and WILDER, JJ.

PER CURIAM.

Defendant appeals as of right from his conviction following a jury trial of assault with intent to do great bodily harm, MCL 750.84, felon in possession of a firearm, MCL 750.224f, and possession of a firearm during the commission of a felony (felony-firearm), MCL 750.227b. He was sentenced as a fourth-offense habitual offender, MCL 769.12, to serve 84 to 240 months' imprisonment for the assault with intent to do great bodily harm conviction and 48 to 72 months' imprisonment for the felon in possession of a firearm conviction. He was also sentenced to 24 months' imprisonment for the felony-firearm conviction. We affirm.

Defendant's convictions arose from a shooting in a Lansing park. The victim saw defendant, with whom he had an earlier confrontation, raise a chrome revolver and fire two shots in his direction. The victim sought safety inside his grandmother's car, and as he lay down on the floor, he heard a third shot.

On appeal, defendant argues that prior record variable (PRV) 6 and offense variable (OV) 9 were improperly scored. Defendant preserved his challenge to OV 9, but not to PRV 6.

We review a preserved challenge to a scoring decision for an abuse of discretion. *People v Carrigan*, 297 Mich App 513, 514; 824 NW2d 283 (2012). An abuse of discretion occurs if the trial court chooses an outcome that falls outside the range of principled outcomes. *People v Babcock*, 469 Mich 247, 269; 666 NW2d 231 (2003). Defendant's unpreserved claim of error with respect to PRV 6 is reviewed for plain error affecting substantial rights. *People v Loper*, ___ Mich App ___; ___ NW2d ___ (Docket No. 308026, issued February 14, 2013), slip op, p 2.

"The sentencing court has discretion in determining the number of points to be scored provided that there is evidence on the record that adequately supports a particular score." *People v Waclawski*, 286 Mich App 634, 680; 780 NW2d 321 (2009). Thus, this Court reviews the

scoring to determine whether the sentencing court properly exercised its discretion and whether the evidence adequately supported a particular score. *People v Steele*, 283 Mich App 472, 490; 769 NW2d 256 (2009). “Scoring decisions for which there is *any* evidence in support will be upheld.” *People v Hornsby*, 251 Mich App 462, 468; 650 NW2d 700 (2002) (emphasis added).

PRV 6 addresses an offender’s “relationship to the criminal justice system.” MCL 777.56(1). A court must assess ten points if the offender is on probation. MCL 777.56(1)(c). Defendant argues that his PRV 6 score is inaccurate, and in support, he contends that the presentencing information report (PSIR) indicates that he completed his probation violation sentence prior to the shooting. However, contrary to defendant’s assertion here, the PSIR states that defendant “was an absconder from probation at the time he committed the within offenses.” Further, defendant has misinterpreted the portion of the PSIR that states that defendant’s probation was revoked – while it was eventually revoked, it was revoked on June 22, 2011, which was after the June 8, 2011, date of the park shooting. Therefore, defendant has failed to establish any plain error.

OV 9 addresses the number of victims. MCL 777.39(1). The sentencing court must assess ten points if “two to nine victims” were “placed in danger of physical injury or death” or “four to nineteen victims” were “placed in danger of property loss.” MCL 777.39(1)(c). In scoring OV 9, each person who was placed in danger of physical injury or loss of life or property must be counted as a victim. MCL 777.39(2)(a). A victim must be a direct victim, rather than a member of the community indirectly affected by a crime. *Carrigan*, 297 Mich App at 515-516. Furthermore, “a close proximity to a physically threatening situation may suffice to count the person as a ‘victim.’” *People v Gratsch*, ___ Mich App ___; ___ NW2d ___ (Docket No. 305040, issued February 28, 2013), slip op, p 9.

In this case, there was testimony that there were other people in the park at the time of the shooting, and importantly, the victim testified that he believed the children running around the park, although not specifically targeted by defendant, were nonetheless in danger of being struck by gunfire. Thus, because there was evidence in the record to support the trial court’s decision, the scoring decision will be upheld. *Hornsby*, 251 Mich App at 468.

Affirmed.

/s/ Joel P. Hoekstra
/s/ Michael J. Talbot
/s/ Kurtis T. Wilder