

Court of Appeals, State of Michigan

ORDER

People of MI v Zachariaha Thomas Herman

Docket No. 353453

LC No. 19-013424-FH

Christopher M. Murray
Presiding Judge

Kirsten Frank Kelly

Anica Letica
Judges

In lieu of granting the delayed application for leave to appeal, this matter is REMANDED to the lower court for an articulation of evidence in support of the scoring of 10 points for OV 4, or if no such evidence exists, for resentencing. OV 4 addresses a victim’s psychological injury, MCL 777.34(1), and is assessed 10 points when “[s]erious psychological injury requiring professional treatment occurred to a victim.” MCL 777.34(1)(a). 10 points is also assessed “if the serious psychological injury may require professional treatment. In making this determination, the fact that treatment has not been sought is not conclusive.” MCL 777.34(2). “The trial court may assess 10 points for OV 4 if the victim suffers, among other possible psychological effects, personality changes, anger, fright, or feelings of being hurt, unsafe, or violated.” *People v Armstrong*, 305 Mich App 230, 247; 851 NW2d 856 (2014). In addition, “the scoring of OV 4 cannot be based on the assumption that people typically suffer psychological injury when they are victims of the type of crime in question.” *People v Lampe*, 327 Mich App 104, 114; 933 NW2d 314 (2019). Further, although relevant, a crime victim’s fear during the crime alone fails to meet the threshold for scoring under OV 4. *Id.* Here, the record does not contain any evidence that the victim suffered serious psychological injury requiring professional treatment. Perhaps because there was no objection to the scoring of OV 4, no evidence was presented to the trial court on the issue. But, in the absence of any supporting evidence, the scoring of OV 4 was plain error. The delayed application is otherwise denied for lack of merit in the grounds presented.

We do not retain jurisdiction.



Presiding Judge



A true copy entered and certified by Jerome W. Zimmer Jr., Chief Clerk, on

July 16, 2020

Date



Chief Clerk