

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

---

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DAVID TALAMANTEZ,

Defendant-Appellant.

---

UNPUBLISHED

April 16, 1996

No. 182725

LC No. 94067728 FC

Before: Cavanagh, P.J., and Marilyn Kelly and J.R. Johnson,\* JJ.

PER CURIAM.

Defendant pleaded guilty to bank robbery and possession of a firearm during the commission of a felony. MCL 750.531; MSA 28.799, MCL 750.227b; MSA 28.424(2). The trial judge sentenced him to two years' imprisonment for the felony firearm count and to ten to twenty years' imprisonment consecutively on the bank robbery count.

Defendant appeals from his sentences as of right, arguing that, due to ineffective assistance of counsel during an evidentiary hearing, the judge improperly scored Offense Variable 2 (OV 2) at 25 points. He argues that his sentences are disproportionate and that lenity is required because of vagueness in the guidelines. He asserts, also, that the judgment of sentence fails to indicate that his sentences are to run concurrently with his sentences for unrelated convictions. We affirm and remand.<sup>1</sup>

Defense counsel's failure to object to portions of Debra Glenn's testimony did not result in an erroneous scoring of OV 2. To establish ineffective assistance of counsel, a defendant must show that trial counsel's performance fell below an objective standard of reasonableness resulting in prejudice. *People v Pickens*, 446 Mich 298, 302-303; 521 NW2d 797 (1994); *People v Stanaway*, 446 Mich 643, 687-688; 521 NW2d 557 (1994).

---

\* Circuit judge, sitting on the Court of Appeals by assignment.

In this case, we find no evidence that defendant was prejudiced by counsel's handling of his case. Moreover, we do not believe that a remand for a *Ginther*<sup>2</sup> hearing is necessary. Defendant argues that counsel should have (1) objected to Debra Glenn's description of a usual bank robbery; (2) objected that there were no facts in evidence that required analysis by a competent expert; and (3) objected that Glenn testified as to the meaning of bank robbery. However, a review of the record indicates that the judge did not base his scoring on the fact that this was not a typical bank robbery as Glenn testified. Rather, the scoring was based on defendant's actions while robbing the bank.

The trial judge properly scored OV 2. Twenty-five points are appropriate where the victim was subjected to terrorism. *People v Johnson*, 202 Mich App 281, 289; 508 NW2d 509 (1993). Terrorism is conduct designed to increase substantially the fear and anxiety that a victim suffers during an offense. *People v Hernandez*, 443 Mich 1, 6 n 4; 503 NW2d 629 (1993).

In this case, the trial judge relied on evidence showing that, upon entering the bank, defendant pointed his gun at the tellers and yelled at them with profanities to give him the money. The tone of his voice and the manner in which he used his weapon were meant to instill fear in the victims in order to gain their cooperation. His conduct fits within the definition of terrorism. OV 2 was properly scored at twenty-five points.

Moreover, we find that the sentences are proportionate to both the offenses and the offender. *People v Milbourn*, 435 Mich 630; 461 NW2d 1 (1990). Defendant was not denied due process rights as the result of vagueness in the guidelines.

Finally, we remand this matter for correction of the judgment of sentence to state that the sentences run concurrently to sentences imposed in Eaton County cases 94-172-FC and 94-174 FC. Defendant's plea was conditioned on that fact.

We affirm defendant's conviction and sentence and remand for correction of the judgment of sentence.

/s/ Mark J. Cavanagh

/s/ Marilyn Kelly

/s/ J. Richardson Johnson

<sup>1</sup> Defendant correctly asserts that, based on its wording, our previous order denying his motion to remand does not constitute law of the case.

<sup>2</sup> *People v Ginther*, 390 Mich 436; 212 NW2d 922 (1973).