

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

WILLIAM LEE GENNETTE,

Defendant-Appellant.

UNPUBLISHED

May 14, 1996

No. 180011

LC No. 93-003327-FH

Before: Kavanagh, T.G.,* P.J., and R.B. Burns** and G.S. Allen,** JJ.

MEMORANDUM.

Defendant pleaded guilty of attempted assault with intent to do great bodily harm less than murder, MCL 750.84; MSA 28.279; MCL 750.92; MSA 28.287, and was sentenced to three to five years' imprisonment. He appeals as of right. We affirm. This case has been decided without oral argument pursuant to MCR 7.214(A).

Defendant argues that "excessive brutality" is already encompassed in the underlying offense and therefore should not be scored in Offense Variable 2. We disagree. An attempted assault does not depend on the infliction of an injury. *People v Jones*, 443 Mich 88, 100-101; 504 NW2d 158 (1993); CJI2d 17.1. The underlying offense addresses the actor's intent, while Offense Variable 2 addresses the actual results. The offense variable was not improperly scored.

Affirmed.

/s/ Thomas G. Kavanagh

/s/ Robert B. Burns

*Former Supreme Court Justice, sitting on the Court of Appeals by assignment pursuant to Administrative Order 1995-1.

**Former Court of Appeals Judges, sitting on the Court of Appeals by assignment pursuant to Administrative Order 1995-1.

/s/ Glenn S. Allen, Jr.