

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

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

TAJUAN JERMAINE RAY,

Defendant-Appellant.

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UNPUBLISHED

September 20, 1996

No. 185192

LC No. 93-008564-FC

Before: Doctoroff, C.J., and Hood and Bandstra, JJ.

PER CURIAM.

Defendant, a juvenile, pleaded guilty to charges of second-degree murder, MCL 750.317; MSA 28.549, and possession of a firearm during the commission of a felony, MCL 750.227b; MSA 28.424(2). He was thereafter sentenced as an adult to life imprisonment for the murder conviction, plus two years' imprisonment for the felony-firearm conviction. The sentences were ordered to be served consecutively. Defendant now appeals as of right. We affirm.

I

Defendant first argues that the trial court erred in its scoring of Offense Variables 3, 9 and 25. A trial court has the discretion to determine the number of points that should be scored under the guidelines, provided that there is evidence in the record that adequately supports a particular score. *People v Daniels*, 192 Mich App 658, 674; 482 NW2d 176 (1992). This Court will not intervene in the trial court's scoring decision if there is any evidence to support the decision. *People v Hernandez*, 443 Mich 1, 16; 503 NW2d 629 (1993).

Defendant failed to object to the court's scoring of OV 3 at the time of sentencing and he did not make a motion to remand in this Court. The failure to object to the scoring of the guidelines in the trial court waives appellate review of the issue. *Daniels, supra*, at 674. In any event, the court's scoring of this variable was proper because the evidence supported a finding that defendant shot the victim with the requisite intent to commit first-degree murder. *People v Watkins*, 209 Mich App 1, 5-6; 530 NW2d 111 (1995); *People v LeMarbe (After Remand)*, 201 Mich App 45, 48-49; 505 NW2d 879 (1993). Because the trial court's scoring of OV 3 was correct, any change in the scores

for OV 9 and OV 25 would not result in a change in the guidelines' range.<sup>1</sup> Therefore, we need not reach the merits of these arguments. *People v Jarvi*, 216 Mich App 161, 164; 548 NW2d 676 (1996).

## II

Defendant next argues that the trial court erred in sentencing him as an adult rather than as a juvenile. We find no error.

There is a bifurcated standard of review for this issue. The trial court is required to make factual findings and conclusions of law in deciding whether to sentence a defendant as a juvenile or an adult offender. MCL 769.1(5); MSA 29.1072(5); MCR 6.931(E)(4); *People v Lyons (On Remand)*, 203 Mich App 465, 469; 513 NW2d 170 (1994). The trial court's factual findings regarding each of the statutory factors found in MCL 769.1(3); MSA 29.1072(3) are reviewed under the clearly erroneous standard. *Lyons, supra* at 467-468. A court's factual findings are clearly erroneous if, after a review of the record, this Court is left with a definite and firm conviction that a mistake has been made. *Id.* The trial court's ultimate decision whether to sentence the defendant as a juvenile or an adult is reviewed for an abuse of discretion. *Id.* Under the second standard, the trial court must determine a proportionate sentence. *Id.*, at 468. However, defendant does not challenge the proportionality of his sentence on appeal.

The trial court is required by MCL 769.1(3); MSA 29.1072(3) to consider the following factors in its decision:

- (a) The prior record and character of the juvenile, his or her physical and mental maturity, and his or her pattern of living.
- (b) The seriousness and the circumstances of the offense.
- (c) Whether the offense is part of a repetitive pattern of offenses which would lead to 1 of the following determinations:
  - (i) The juvenile is not amenable to treatment.
  - (ii) That despite the juvenile's potential for treatment, the nature of the juvenile's delinquent behavior is likely to disrupt the rehabilitation of other juveniles in the treatment program
- (d) Whether, despite the juvenile's potential for treatment, the nature of the juvenile's delinquent behavior is likely to render the juvenile dangerous to the public if released at the age of 21.
- (e) Whether the juvenile is more likely to be rehabilitated by the services and facilities available in adult programs and procedures than in juvenile programs and procedures.

- (f) What is in the best interests of the public welfare and the protection of the public security.

The burden is on the prosecution to show by a preponderance of the evidence that the best interests of the juvenile and the public would be served by sentencing the juvenile as an adult offender. MCR 6.931(E)(2); *Lyons, supra* at 469.

On factor (a), the trial court found that defendant caused numerous problems while in school and had a serious juvenile record. Moreover, defendant did not have any mental or emotional impairment that prevented him from conforming his conduct to the requirements of the law. The presentence investigation report and the psychologists' reports supported the trial court's findings on this factor. These findings were not clearly erroneous.

On factor (b), the facts showed that defendant committed a premeditated, cold-blooded killing for money. The trial court justifiably found that this crime was a very serious offense. There was evidence in the record that defendant killed the victim after he made the decision to go home and retrieve a gun. After retrieving the gun, defendant tracked down the victim, shot and robbed him. Therefore, the trial court's finding on this factor was not clearly erroneous.

On factor (c), the trial court found that defendant's history while in school, together with the psychologists' evaluations, supported the finding that defendant's behavior was likely to disrupt other juveniles if defendant was placed in a juvenile facility. Again, the court's finding was well supported by the record, as both experts believed that defendant's past hostile and aggressive behavior towards his peers would be disruptive to other juveniles. The court's findings on this factor were not clearly erroneous.

On factor (d), the trial court relied upon the expert testimony of forensic psychiatrist Dr. Stephen Cook, who opined that defendant would still be dangerous at the age of twenty-one years. The experts agreed that defendant would need at least four to five years of intensive treatment even if he was motivated to change. Dr. Cook believed that defendant was a dangerous individual at the time of sentencing. Given the amount of time defendant needed to change his behavior even if he was motivated, it was likely that he would remain dangerous at the age of twenty-one years. Thus, the trial court's findings on this factor were not clearly erroneous.

In regard to factor (e), the court found that both the adult and juvenile systems offered comparable programs and one was not favored over the other. If defendant were to take advantage of those programs, either system would offer suitable assistance. This finding was not clearly erroneous. Both systems offered educational programs, counseling or group therapy, and substance abuse treatment.

On factor (f), the court found that it was in the best interests of the public welfare and for the protection of society to sentence defendant as an adult. In light of defendant's record of aggressive and violent behavior, the court's finding was not erroneous. Defendant showed little motivation to change,

and it was unlikely that he could be rehabilitated before he reached the age of twenty-one years, at which time he would be released from a juvenile facility.

Based on the foregoing, the trial court's findings of fact were not clearly erroneous. *Lyons, supra* at 467-468. Accordingly, the trial court's decision to sentence defendant as an adult did not constitute an abuse of discretion.

### III

Finally, defendant claims he should have been allowed to withdraw his guilty plea because the trial court did not abide by the terms of the plea agreement. The plea agreement included a prosecutor's recommendation that the trial court not exceed the guidelines. When sentencing defendant, the trial court imposed a sentence of life imprisonment, which was a penalty within the guidelines' range. However, defendant and his counsel apparently did not anticipate that a sentence within the guidelines would include a life term, but would only include an indeterminate sentence. We find no error. The plea agreement clearly left the scoring of the guidelines for the trial court's determination. The agreement contained no provision limiting the sentence to a specific guidelines' range. Accordingly, the trial court properly abided by the terms of the plea agreement and sentenced defendant consistent with the prosecutor's recommendation. On these facts, defendant did not have a right to withdraw his plea. *People v Grove*, 208 Mich App 574, 577-580; 528 NW2d 796 (1995).

Affirmed.

/s/ Martin M. Doctoroff

/s/ Harold Hood

/s/ Richard A. Bandstra

<sup>1</sup> The trial court originally scored OV 25 at fifteen points, but, upon defendant's objection, agreed to change the score to five points. However, the Sentencing Information Report remained unchanged, showing that defendant received a score of fifteen points on the variable. This clerical error in the Sentencing Information Report should be corrected upon return of the record.