

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ALBERTA ANDREWS,

Defendant-Appellant.

UNPUBLISHED

October 1, 1996

No. 184540

LC No. 94-009285

Before: Wahls, P.J., and Fitzgerald and L.P. Borrello,* JJ.

PER CURIAM.

Following a bench trial, defendant was convicted of second-degree murder, MCL 750.317; MSA 28.549, and was sentenced to a prison term of twenty-five to fifty years. Defendant appeals as of right. We affirm.

Defendant first argues that the trial court's finding that she was the aggressor was clearly erroneous. We disagree. The eyewitness testimony revealed that defendant charged at the victim, Thomas Ruffin, with a crowbar and chased Ruffin around a van yelling "give me my money." Ruffin never hit defendant and was simply trying to ward off defendant's attacks. Defendant then hit Ruffin on the leg, and Ruffin fell to the ground. While Ruffin was laying on the ground, defendant hit him in the head with the crowbar until Ruffin lay motionless. These facts, in conjunction with the medical evidence that Ruffin died from severe injuries to his head, adequately support the trial court's findings. Therefore, the trial court's finding that defendant was the aggressor was not clearly erroneous. See *People v Gistover*, 189 Mich App 44, 46; 472 NW2d 27 (1991).

Defendant next claims that the trial court erred by failing to consider the defense of imperfect self-defense to reduce the second-degree murder charge to voluntary manslaughter. When rendering its verdict, the trial court rejected voluntary manslaughter as a lesser included offense because defendant was the aggressor. The trial court, however, did not consider the imperfect self-defense doctrine

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

because defendant failed to raise this defense. Hence, this issue has been waived on appeal. *People v Wilkens*, 139 Mich App 778, 787; 362 NW2d 862 (1984).

In any event, defendant could not claim imperfect self-defense. Defendant was pursuing and hitting Ruffin. Ruffin never hit defendant. Thus, defendant could not have had an honest and reasonable belief that her life was in imminent danger or that she was threatened with serious bodily harm. See *People v Kemp*, 202 Mich App 318, 322-323; 508 NW2d 184 (1993). Even if defendant's fears were reasonable, she used more force than necessary to defend herself by beating Ruffin to death while he was laying on the ground. *Id.* at 325.

Defendant also argues that the trial court erred by considering her expunged juvenile record when scoring Prior Record Variable (PRV) 3. We disagree. A sentencing court is free to consider expunged juvenile records when sentencing a criminal defendant as an adult. *People v Smith*, 437 Mich 293, 302; 470 NW2d 70 (1991).

Defendant argues that the trial court incorrectly scored twenty-five points for PRV 3. This Court will uphold a sentencing court's scoring decision if any evidence exists to support that score. *People v Hernandez*, 443 Mich 1, 16; 503 NW2d 629 (1993). According to defendant's juvenile record, there were at least two high severity juvenile adjudications. This evidence was sufficient to justify a score of twenty-five points for PRV 3.

In addition, the court calculated an alternate score in response to defendant's claim at sentencing that PRV 3 should have been scored at 10 points. The court noted the alternate score and its resulting guidelines range (120 to 300 months, or twelve to twenty-five years) on the sentencing information report. The original calculation resulted in a guidelines range of 144 to 300 months, or twelve to twenty-five years. Accordingly, since defendant's twenty-five year minimum sentence is consistent with either calculation, any error by the trial court was harmless. See *People v Johnson*, 202 Mich App 281, 290; 508 NW2d 509 (1993).

Affirmed.

/s/ Myron H. Wahls
/s/ E. Thomas Fitzgerald
/s/ Leopold P. Borrello