

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ROY SCOTT OAKS,

Defendant-Appellant.

UNPUBLISHED

March 28, 1997

No. 187546

Genesee Circuit Court

LC No. 95-051564-FH

Before: D.F. Walsh,* P.J., and R.P. Griffin** and W.P. Cynar,* JJ.

MEMORANDUM.

Defendant pleaded guilty to breaking and entering with intent to commit larceny, MCL 750.110; MSA 28.305, and was sentenced to three to ten years' imprisonment. He appeals as of right. We affirm. This case has been decided without oral argument pursuant to MCR 7.214(A).

Defendant's sole argument on appeal is that the court erred in scoring ten points for Offense Variable 8 because he had been receiving social security and there was no indication that he derived a substantial portion of his income from criminal activities. The sentencing guidelines provide, in part, that ten points is to be scored for OV 8 when "[t]he offense is a part of a pattern of criminal activities over a period of time from which the offender derives a substantial portion of his or her income." Michigan Sentencing Guidelines (2d ed, 1988) p 35. The record reveals that defendant is unemployed, he has had numerous theft convictions over a long period of time and he was not approved for social security benefits until after the offense in issue. Accordingly, we find that the court did not abuse its discretion in scoring ten points for OV 8 because there was adequate evidence that the instant offense was a part of a pattern of criminal activities over a period of time from which defendant derived a substantial portion of his income. *People v Ayers*, 213 Mich App 708, 723-724; 540 NW2d 791 (1995).

*Former Court of Appeals judges, sitting on the Court of Appeals by assignment pursuant to Administrative Order 1996-10.

**Former Supreme Court justice, sitting on the Court of Appeals by assignment pursuant to Administrative Order 1996-10.

Affirmed.

/s/ Daniel F. Walsh
/s/ Robert P. Griffin
/s/ Walter P. Cynar