

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

WILLIAM L. HUDSON,

Defendant-Appellant.

UNPUBLISHED

October 12, 2004

No. 247706

Wayne Circuit Court

LC No. 01-008682

Before: Borrello, P.J., and Murray and Fort Hood, JJ.

PER CURIAM.

Defendant was charged with two counts of assault with intent to murder, MCL 750.83, assault with intent to rob while armed, MCL 750.89, carjacking, MCL 750.529a, and possession of a firearm during the commission of a felony, MCL 750.227b. Following a jury trial, defendant was convicted on one count of assault with intent to murder, carjacking, and felony-firearm. He was sentenced to concurrent prison terms of ten years, ten months to forty-five years on the assault and carjacking convictions, to be served consecutively to the mandatory two-year term for felony-firearm. Defendant appeals his sentences as of right, challenging the scoring of the guidelines. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

“Sentencing issues are reviewed by this Court for an abuse of discretion by the trial court.” *People v Garza*, 246 Mich App 251, 256; 631 NW2d 764 (2001). The court must impose a minimum sentence within the guidelines range unless a departure from the guidelines is permitted. MCL 769.34(2). “A sentencing court has discretion in determining the number of points to be scored provided that evidence of record adequately supports a particular score.” *People v Hornsby*, 251 Mich App 462, 468; 650 NW2d 700 (2002). A scoring decision “for which there is any evidence in support will be upheld.” *People v Elliott*, 215 Mich App 259, 260; 544 NW2d 748 (1996). “Where effectively challenged, a sentencing factor need be proved only by a preponderance of the evidence.” *People v Harris*, 190 Mich App 652, 663; 476 NW2d 767 (1991). This Court reviews the scoring to determine whether the sentencing court properly exercised its discretion and whether the evidence adequately supported a particular score. *People v McLaughlin*, 258 Mich App 635, 671; 672 NW2d 860 (2003).

Defendant was assessed twenty-five points for OV 1, indicating that a firearm was discharged at or toward a human being. MCL 777.31(1)(a). The scoring of the guidelines need not be consistent with the jury’s verdict. *People v Ratkov (After Remand)*, 201 Mich App 123,

125-126; 505 NW2d 886 (1993). While the jury may have found that an assault with intent to murder predicated on the shooting was not proved beyond a reasonable doubt, the sentencing court need only determine that it was proved by a preponderance of the evidence for sentencing purposes. The trial court's determination that defendant discharged a weapon at the victim was amply supported by the evidence, which showed that defendant shot the victim in the neck. Therefore, the trial court did not err in scoring OV 1. *Id.*

Defendant was assessed twenty-five points for OV 3, indicating that the victim sustained a life threatening or permanent incapacitating injury. MCL 777.33(1)(c). The trial court concluded that the victim's gunshot wound was life threatening and stated that the victim's visual appearance revealed that the victim suffered a permanent incapacitating injury. The defendant shot the victim in the neck, and the victim was hospitalized for his injuries. On this record, we cannot conclude that the trial court's factual findings were clearly erroneous. See *People v Hicks*, 259 Mich App 518, 522; 675 NW2d 599 (2003). The fact that the victim was able to flee from defendant's continued pursuit does not negate the nature of the injury. Defendant will not benefit from the victim's persistence to survive and elude further injury.

Affirmed.

/s/ Stephen L. Borrello
/s/ Christopher M. Murray
/s/ Karen M. Fort Hood