

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ANTHONY BERNARD ROBERTSON,

Defendant-Appellant.

UNPUBLISHED

March 22, 2005

No. 249603

Oakland Circuit Court

LC No. 2002-185103-FC

Before: Murray, P.J., and Markey and O’Connell, JJ.

PER CURIAM.

Defendant appeals as of right from his consecutive sentences of five to twenty years in prison imposed on his jury convictions of two counts of first-degree home invasion, MCL 750.110a(2). We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant was charged with two counts of first-degree home invasion and one count of assault with intent to commit murder, MCL 750.84, as a result of an incident in which he broke a window and entered complainant’s home, chased complainant into a neighbor’s residence, choked her, and threatened to kill her. Complainant indicated that she and defendant were involved in a romantic relationship for a time, but were no longer dating at the time of the incident. However, defendant testified that on the date of the incident he still resided at complainant’s residence. He maintained that he returned to the residence to retrieve his work identification card, climbed a tree intending to knock on a window to draw complainant’s attention, and slipped and fell through the window. He stated that he followed complainant into the other residence to reassure her that he did not intend to harm her, and denied choking complainant or threatening to kill her.

The jury convicted defendant of two counts of first-degree home invasion, and one count of felonious assault, MCL 750.82, as a lesser included offense of assault with intent to commit murder. The trial court sentenced defendant to consecutive terms of five to ten years in prison

for his convictions of first-degree home invasion, and to ninety-three days in jail for his conviction of felonious assault.¹ Defendant has not appealed his sentence for felonious assault.

In calculating the sentencing guidelines the trial court has discretion to determine the number of points to be scored, provided that evidence in the record supports a particular score. A scoring decision for which there is any evidence in the record will be upheld. *People v Hornsby*, 251 Mich App 462, 468; 650 NW2d 700 (2002).

The scoring of Offense Variable (OV) 10, MCL 777.40, exploitation of vulnerable victim, at ten points is appropriate if the evidence shows that the defendant exploited a domestic relationship with the victim. MCL 777.40(1)(b). The term “exploit” means “to manipulate a victim for selfish or unethical purposes.” MCL 777.40(3)(b). The scoring of OV 13, MCL 777.43, continuing pattern of criminal behavior, at twenty-five points is appropriate if the evidence shows that the sentencing offense was “part of a pattern of felonious criminal activity involving 3 or more crimes against a person.” MCL 777.43(1)(b). A crime need not have resulted in a conviction in order to be counted in the scoring of OV 13. MCL 777.43(2)(a).

Defendant argues that he is entitled to resentencing on his convictions of first-degree home invasion because the trial court erred by scoring OVs 10 and 13 at ten and twenty-five points, respectively.² We disagree. The evidence showed that, at a minimum, defendant attempted to use his current or former relationship with complainant to persuade her to allow him entry into the home, and that he broke a window only when his efforts at persuasion were unsuccessful. The evidence also minimally established that defendant continued to reside with the victim at her home. Thus, evidence supported the trial court’s scoring of OV 10 at ten points. *Hornsby, supra*. Similarly, evidence supported the trial court’s scoring of OV 13 at twenty-five points. Defendant was convicted of two felonies and one misdemeanor. An offense may be counted for calculation of OV 13 even if it did not result in a conviction. MCL 777.43(2)(a). The jury declined to find beyond a reasonable doubt that defendant committed the offense of assault with intent to commit murder; however, for purposes of sentencing, the trial court was entitled to find that a preponderance of the evidence supported a conviction of that offense. *People v Ratkov*, 201 Mich App 123, 126; 505 NW2d 886 (1993), remanded in part by 447 Mich 984 (1984).³ Defendant is not entitled to resentencing.

The primary goal of statutory interpretation is to ascertain and give effect to the intent of the Legislature. *People v Weeder*, 469 Mich 493, 497; 674 NW2d 372 (2004). We review an

¹ Subsequently, the trial court amended the judgment of sentence to impose the mandated maximum term of twenty years for each conviction of first-degree home invasion.

² Defendant preserved this issue by moving for resentencing. *People v Kimble*, 470 Mich 305, 309; 684 NW2d 669 (2004).

³ Defendant’s assertion that the decision in *Blakely v Washington*, 542 US ___; 124 S Ct 2531; 159 L Ed 2d 403 (2004), precluded the trial court from making such a finding is without merit. *Blakely* does not apply to Michigan’s system of sentencing. *People v Claypool*, 470 Mich 715, 730 n 4; 684 NW2d 278 (2004).

issue of statutory interpretation de novo on appeal. *People v Davis*, 468 Mich 77, 79; 658 NW2d 800 (2003).

MCL 750.110a(8) provides that a sentencing court may order that a sentence imposed for first-degree home invasion be served consecutively to a term of imprisonment imposed “for any other criminal offense arising from the same transaction.” Defendant argues that the trial court erred by relying on MCL 750.110a(8) to impose consecutive sentences for his convictions of first-degree home invasion. We disagree. Defendant’s interpretation of MCL 750.110a(8) would limit consecutive sentencing to instances in which a separate crime was committed in the dwelling in the course of the home invasion. Nothing in the plain language of MCL 750.110a(8) so limits the court’s authority to impose consecutive sentences. In this case, defendant committed two home invasions in quick succession as part of the same transaction. The imposition of consecutive sentences for those home invasions gave effect to the intent of the Legislature as stated in MCL 750.110a(8). *Weeder, supra*.

Affirmed.

/s/ Christopher M. Murray
/s/ Jane E. Markey
/s/ Peter D. O’Connell