

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JASON MICHAEL JONES,

Defendant-Appellant.

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UNPUBLISHED

November 14, 2006

No. 269475

Kalkaska Circuit Court

LC No. 05-002563-FH

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

PER CURIAM.

Defendant pleaded guilty to one count of second-degree home invasion, MCL 750.110(a)(3), and five counts of breaking and entering of a building with intent to commit larceny, MCL 750.110. Defendant was sentenced to 48 to 180 months' imprisonment for his conviction of second-degree home invasion and 23 to 120 months for each conviction of breaking and entering a building with intent to commit larceny, all sentences to run concurrently. Defendant appeals by leave granted his sentence of 48 to 180 months' imprisonment for his second-degree home invasion conviction. This case arises out of a series of breaking and entering offenses and larcenies committed between January 31, 2005 and March 20, 2005. We affirm. This case is being decided without oral argument under MCR 7.214(E).

Defendant argues that the trial court erred in scoring the sentencing guidelines. Specifically, defendant alleges an overall scoring error of ten points, attributable specifically to either the scoring of offense variable (OV) 12, MCL 777.42 (contemporaneous felonious criminal activity), or OV 13, MCL 777.43 (continuing pattern of criminal behavior). Defendant argues that the alleged scoring error resulted in a sentence outside the minimum sentencing guidelines range. We review a trial court's scoring of sentencing guideline variables for clear error. *People v Witherspoon*, 257 Mich App 329, 334-335; 670 NW2d 434 (2003). A scoring decision is not clearly erroneous if there is any evidence to support the decision. *Id.* at 335.

OV 12 scores a defendant's contemporaneous felonious criminal acts. A contemporaneous felonious criminal act is one that "occurred within 24 hours of the sentencing offense" and "has not and will not result in a separate conviction." MCL 777.42(2)(a)(i), (ii). A defendant may be assessed ten points under OV 12 when "[t]wo contemporaneous felonious criminal acts involving crimes against a person were committed" or when "[t]hree or more contemporaneous felonious criminal acts involving other crimes were committed." MCL 777.42(1)(b), (c). The evidence shows that defendant committed at least four criminal felonious

acts of larceny in a building, MCL 750.360, within 24 hours of the sentencing offense, none of which have or will result in conviction. Thus, a score of ten points for OV 12 was proper.

OV 13 scores a defendant's continuing pattern of criminal behavior. In scoring OV 13, "all crimes within a 5-year period, including the sentencing offense, shall be counted regardless of whether the offense resulted in a conviction." MCL 777.43(2)(a). However, conduct scored in OVs 11 or 12 cannot be scored in OV 13 unless the offenses related to membership in an organized criminal group. MCL 777.43(2)(c). In order to be assessed ten points under OV 13, the offense must have been "part of a pattern of felonious criminal activity involving a combination of 3 or more crimes against a person or property" or "part of a pattern of felonious criminal activity directly related to membership in an organized criminal group." MCL 777.43(1)(c), (d). Defendant pleaded guilty to six crimes committed within a two-month period, none of which have been accounted for in scoring OV 12. Defendant also admitted to committing over 20 break-ins and larcenies within that same period. Thus, the evidence supports defendant's score of ten points for OV 13.

Accordingly, we conclude that the trial court's scoring of the sentencing guidelines was not clearly erroneous and that defendant's sentence of 48 to 180 months is within the minimum sentencing guidelines range.

Affirmed.

/s/ Karen M. Fort Hood  
/s/ Christopher M. Murray  
/s/ Pat M. Donofrio