

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ORLANDO GONZALEZ,

Defendant-Appellant.

UNPUBLISHED

July 12, 2007

No. 269761

Oakland Circuit Court

LC No. 2004-195008-FH

Before: Davis, P.J., and Hoekstra and Donofrio, JJ.

PER CURIAM.

Defendant was convicted by a jury of second-degree criminal sexual conduct (CSC), MCL 750.520c(1)(e), operating a motor vehicle while under the influence of intoxicating liquor (OUIL), MCL 257.625(1), and operating a motor vehicle without a valid license, MCL 257.301. The trial court sentenced defendant as an habitual offender, fourth offense, MCL 769.12, to concurrent prison terms of 19 to 40 years for the CSC conviction, and 93 days for each of the remaining convictions. In a prior appeal in Docket No. 261564, this Court granted defendant's motion to remand to allow him to move for resentencing, and the trial court resentenced defendant to concurrent prison terms of 19 to 40 years for the CSC conviction, 93 days for the OUIL conviction, and 90 days for the operating a vehicle without a license conviction. Defendant now appeals as of right from the judgment of sentence entered after his resentencing.¹ Because the trial court did not err in scoring offense variable (OV) 4 at ten points, we affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant argues that the trial court erred in scoring offense variable (OV) 4 at ten points. A trial court has discretion in determining the number of points to be scored, provided there is evidence that adequately supports a particular score. The trial court's scoring decision will be upheld if there is any evidence to support it. *People v Endres*, 269 Mich App 414, 417; 711 NW2d 398 (2006).

Offense variable 4 should be scored at ten points where "[s]erious psychological injury requiring professional treatment occurred to a victim." MCL 777.34(1)(a). The instructions

¹ After the trial court resentenced defendant, the parties stipulated to dismiss defendant's appeal in Docket No. 261564.

provide that “the fact that treatment has not been sought is not conclusive.” MCL 777.34(2). See *People v Wilkens*, 267 Mich App 728, 740; 705 NW2d 728 (2005). At sentencing, the victim advised the court that her pride, self-confidence, and her life had “suffered so much from this incident.” The record also discloses that the victim had sought counseling, but was unable to attend because funding for the counseling program was eliminated. On these facts, the trial court did not abuse its discretion in determining that ten points should be scored for OV 4 because the victim suffered a serious psychological injury requiring professional treatment.

Defendant also argues that he is entitled to resentencing because the trial court considered facts not found by the jury beyond a reasonable doubt, contrary to *Blakely v Washington*, 542 US 296; 124 S Ct 2531; 159 L Ed 2d 403 (2004). Our Supreme Court has held that *Blakely* does not apply to Michigan’s indeterminate sentencing scheme. *People v Drohan*, 475 Mich 140, 143, 154-156, 164; 715 NW2d 778 (2006); *People v Claypool*, 470 Mich 715, 730 n 14; 684 NW2d 278 (2004). Thus, defendant’s argument is without merit.

Affirmed.

/s/ Alton T. Davis
/s/ Joel P. Hoekstra
/s/ Pat M. Donofrio