

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,  
  
Plaintiff-Appellee,

v

PECOLA MICHELLE JAMISON,  
  
Defendant-Appellant.

FOR PUBLICATION  
April 26, 2011  
9:15 a.m.

No. 297154  
Oakland Circuit Court  
LC No. 2009-227741-FH

Advance Sheets Version

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Before: BECKERING, P.J., and WHITBECK and M. J. KELLY, JJ.

PER CURIAM.

A jury convicted defendant, Pecola Jamison, of assault with intent to do great bodily harm less than murder<sup>1</sup> and felony-firearm.<sup>2</sup> The trial court sentenced Jamison to a prison term of 1 to 10 years for assault with intent to do great bodily harm less than murder and the mandatory consecutive 2-year prison term for felony firearm. Jamison now appeals as of right. We vacate Jamison's sentence and remand to the trial court for resentencing.

**I. FACTS**

Jamison and her boyfriend, Alexis Jenkins, dated from sometime in 2006 to the spring or early summer of 2007. In the winter of 2007, they engaged in consensual sexual relations, but Jenkins chose to end the relationship in early January 2008. Jenkins testified that Jamison was not happy about the breakup and that he changed his telephone number so that Jamison could not contact him. After that, Jenkins saw Jamison at a social gathering in March 2008 and then several times in traffic before a May 3, 2009, encounter.

Jenkins testified that on May 3, 2009, at approximately 4:00 p.m., he made eye contact with Jamison while they passed each other in traffic. Shortly thereafter, Jenkins noticed Jamison's vehicle in his rearview mirror. He testified that she was driving the vehicle erratically,

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<sup>1</sup> MCL 750.84.

<sup>2</sup> MCL 750.227b.

swerving back and forth in the lane. Jenkins testified that Jamison's vehicle was so close to his that he had to either speed up or get out of her way to avoid a collision.

Jenkins testified that he then pulled over on a side street. He thought that Jamison might have wanted to talk to him. Jenkins testified that Jamison pulled her vehicle alongside his and that the vehicles were separated by about three feet. Before Jenkins had the opportunity to speak to Jamison, she pulled out a pistol, pointed it at his face, and fired. Jenkins drove away and went to the hospital, thinking that he might have been shot. After being examined by hospital staff, he was reassured that he was not injured. There was, however, a large bullet hole in the driver's side door. Police officers later removed a large caliber bullet from the driver's seat of Jenkins's vehicle. The next day, Jenkins filed for a personal protection order against Jamison in the Oakland Circuit Court.

A jury convicted Jamison of assault with intent to do great bodily harm less than murder and felony-firearm. The sentencing information report indicated the assessment of 10 points for offense variable (OV) 10 under the sentencing guidelines. Defense counsel objected to the OV 10 score, asserting that Jenkins and Jamison did not have the requisite domestic relationship to justify a score of 10 points. The trial court overruled the objection and sentenced Jamison on the basis of a total OV score of 40 points. Jamison now appeals.

## II. OFFENSE VARIABLE 10

### A. STANDARD OF REVIEW

A trial court has discretion to determine the number of points assigned for a particular offense variable, "provided that evidence of record adequately supports a particular score."<sup>3</sup> This Court will uphold a sentencing court's scoring decision if it is supported by record evidence.<sup>4</sup> However, we review de novo questions of law involving the proper construction or application of the statutory sentencing guidelines.<sup>5</sup> When a sentence is based on a scoring error, resentencing is required.<sup>6</sup>

### B. LEGAL STANDARDS

This Court must affirm a sentence that is within the legislative guidelines range unless the trial court erred in scoring the sentencing guidelines or relied on inaccurate information in determining the defendant's sentence.<sup>7</sup> The facts the trial court relied on when assessing points

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<sup>3</sup> *People v Hornsby*, 251 Mich App 462, 468; 650 NW2d 700 (2002).

<sup>4</sup> *People v Spanke*, 254 Mich App 642, 647; 658 NW2d 504 (2003).

<sup>5</sup> *People v Hegwood*, 465 Mich 432, 436; 636 NW2d 127 (2001).

<sup>6</sup> *People v Jackson*, 487 Mich 783, 792; 790 NW2d 340 (2010).

<sup>7</sup> MCL 769.34(10).

for a particular variable under the sentencing guidelines need not have been determined by the jury when rendering its verdict.<sup>8</sup> “Rather, all that is required is that evidence exists that is adequate to support a particular score.”<sup>9</sup> This Court will uphold a sentencing court’s scoring decision if there is any record evidence to support it.<sup>10</sup>

OV 10 deals with the exploitation of vulnerable victims.<sup>11</sup> A sentencing court properly assesses 10 points for this variable if “[t]he offender exploited a victim’s physical disability, mental disability, youth or agedness, or a *domestic relationship*, or the offender abused his or her authority status.”<sup>12</sup>

### C. APPLYING THE STANDARDS

Jamison argues that there was no domestic relationship between her and Jenkins because the two had never shared a domicile, nor had they engaged in a familial or cohabitating relationship. Accordingly, Jamison contends that had OV 10 been properly scored, her total OV score would have been 30 points. Because Jamison’s prior record variable score was 0, this would have lowered her minimum sentence range to 0 to 11 months.<sup>13</sup> Thus, she argues that her one-year minimum sentence was in excess of the guidelines range, entitling her to resentencing.<sup>14</sup>

In construing the statutory sentencing guidelines, courts must discern and give effect to the intent of the Legislature.<sup>15</sup> The process begins with an examination of the plain language of the statute.<sup>16</sup> When that language is unambiguous, Courts must “presume that the Legislature intended the meaning clearly expressed—no further judicial construction is required or permitted, and the statute must be enforced as written.”<sup>17</sup>

The sentencing guidelines do not define “domestic” or “domestic relationship.” And this Court has not published an opinion addressing the meaning of the term “domestic relationship” in the context of OV 10. This Court has, however, interpreted the term in unpublished opinions,

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<sup>8</sup> *People v Williams*, 191 Mich App 269, 276; 477 NW2d 877 (1991).

<sup>9</sup> *Id.*

<sup>10</sup> *Spanke*, 254 Mich App at 647.

<sup>11</sup> MCL 777.40.

<sup>12</sup> MCL 777.40(1)(b) (emphasis added).

<sup>13</sup> See MCL 777.65.

<sup>14</sup> See *Jackson*, 487 Mich at 792.

<sup>15</sup> *People v Morey*, 461 Mich 325, 329-330; 603 NW2d 250 (1999).

<sup>16</sup> *Id.* at 330.

<sup>17</sup> *Id.*

albeit with divergent conclusions. While these opinions are not binding precedent on this Court, we may consider them as instructive or persuasive.<sup>18</sup>

In *People v Davis*, a panel of this Court turned to the domestic assault statute for guidance on interpretation of the phrase “domestic relationship” as used in OV 10.<sup>19</sup> Under the domestic assault statute, a person is guilty of domestic assault if the person assaults “his or her spouse or former spouse, *an individual with whom he or she has or has had a dating relationship*, an individual with whom he or she has had a child in common, or a resident or former resident of his or her household.”<sup>20</sup> “As used in this section, ‘dating relationship’ means frequent, intimate associations primarily characterized by the expectation of affectional involvement. This term does not include a casual relationship or an ordinary fraternization between 2 individuals in a business or social context.”<sup>21</sup> The *Davis* panel held that because the victim and the defendant engaged in consensual sexual relations; the defendant often spent the night at the victim’s apartment, keeping personal belongings there; and the defendant spent time with the victim’s family, taking care of the victim’s son when the victim was away, the pair maintained a domestic relationship.<sup>22</sup>

Using the *Davis* approach, we would conclude that Jamison formerly maintained a dating relationship with Jenkins because they *had* a previous dating relationship, after the relationship ended they had infrequent consensual sexual relations, and Jenkins kept some clothing at Jamison’s residence. Therefore, if we were to adopt this interpretation, Jamison and Jenkins would have had a domestic relationship that merits a score of 10 points under OV 10. However, we find it significant that the defendant in *Davis* was convicted of domestic assault. This case is distinguishable in that the record here reflects that Jamison was convicted of assault with intent to do great bodily harm less than murder and, further, the prosecution did not even charge Jamison with the crime of domestic assault. Additionally, it would seem that under the *Davis* approach, neither the brevity of the relationship’s duration nor its distant temporal nature is a limiting factor to designate a relationship as “domestic.” Thus, we find application of the approach questionable here, in which Jamison and Jenkins had a fairly brief relationship that ended more than a year before the shooting incident.

In contrast to the *Davis* approach, several other panels of this Court have used the lay dictionary definition of “domestic” and concluded that there must be a “familial” or

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<sup>18</sup> MCR 7.215(C)(1); *Slater v Ann Arbor Pub Sch Bd of Ed*, 250 Mich App 419, 432; 648 NW2d 205 (2002).

<sup>19</sup> *People v Davis*, unpublished opinion per curiam of the Court of Appeals, issued April 14, 2009 (Docket No. 280547), p 5.

<sup>20</sup> MCL 750.81(2) (emphasis added).

<sup>21</sup> MCL 750.81(6).

<sup>22</sup> *Davis*, unpub op at 5.

“cohabitating” relationship to qualify as a domestic relationship.<sup>23</sup> As explained in these decisions, if a statute does not provide a definition for a particular term, courts must “give the term its plain and ordinary meaning.”<sup>24</sup> “When determining the common, ordinary meaning of a word or phrase, consulting a dictionary is appropriate.”<sup>25</sup> *Random House Webster’s College Dictionary* (1997) defines “domestic” as “1. of or pertaining to the home, family, or household affairs. 2. devoted to home life.” Under these definitions, a familial or cohabitating relationship characterizes a domestic relationship.

We do not believe that simply *any* type of dating relationship, past or present, meets the requirements of OV 10. If this were the case, the Legislature would merely have said “relationship” or “dating relationship” rather than “domestic relationship.”<sup>26</sup> Thus, to qualify as a “domestic relationship,” there must be a familial or cohabitating relationship. Further, contrary to the *Davis* analysis that adopted the domestic assault definition of “domestic relationship,” we “cannot assume that the Legislature inadvertently omitted from one statute the language that it placed in another statute, and then, on the basis of that assumption, apply what is not there.”<sup>27</sup> Accordingly, we are not inclined to adopt the *Davis* panel’s interpretation, as it implies a potentially overbroad application based on words that are not in the statute.

Thus, we conclude that Jenkins and Jamison did not have the requisite domestic relationship to warrant assessing 10 points for OV 10. The pair did not share a domicile, and they were not related. The prosecution nevertheless argues that such a relationship did exist, noting that at some point in the past Jenkins was allowed to keep various articles of clothing at Jamison’s house. However, merely being permitted to keep *some* of one’s belongings at a person’s home does not establish a cohabitating relationship.<sup>28</sup> Therefore, Jamison and Jenkins’ relationship did not display the characteristics needed to elevate their ordinary relationship to

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<sup>23</sup> See *People v Robbins*, unpublished opinion per curiam of the Court of Appeals, issued February 19, 2009 (Docket No. 280080); *People v Patrowic*, unpublished opinion per curiam of the Court of Appeals, issued March 6, 2007 (Docket No. 267864); *People v Counts*, unpublished opinion per curiam of the Court of Appeals, issued May 20, 2004 (Docket No. 246717); cf. *People v Montgomery*, unpublished opinion per curiam of the Court of Appeals, issued May 22, 2007 (Docket No. 269201) (relying on both the domestic assault statute and dictionary definitions to conclude that the defendant had a domestic, or familial, relationship with the victim because they had a child together in a case in which the defendant was convicted of domestic violence, MCL 750.81(2), and assessed 10 points under OV 10).

<sup>24</sup> *Title Office, Inc v Van Buren Co Treasurer*, 469 Mich 516, 522; 676 NW2d 207 (2004).

<sup>25</sup> *Id.*

<sup>26</sup> See *Counts*, unpub op at 3.

<sup>27</sup> *Farrington v Total Petroleum, Inc*, 442 Mich 201, 210; 501 NW2d 76 (1993).

<sup>28</sup> See *Counts*, unpub op at 3.

“domestic relationship” status.<sup>29</sup> Accordingly, the trial court erred by assessing 10 points for OV 10.

Jamison had a prior record variable level of zero points. Originally, her presentence investigation report showed a total OV score of 50 points. However, at sentencing, the parties stipulated that OV 17, for which 10 points had been assessed, should have received a score of zero points. For a class D offense,<sup>30</sup> an OV level of 40 points results in a recommended minimum sentence range of zero to 17 months.<sup>31</sup> Had points not been assessed for OV 10, Jamison’s offense variable level would have been 30 points, and her minimum sentence range would have been zero to 11 months.<sup>32</sup> Because her minimum sentence of 1 year is in excess of the guidelines range, she is entitled to resentencing.<sup>33</sup>

We vacate the trial court’s sentence for assault with intent to do great bodily harm less than murder and remand this matter for resentencing consistent with this opinion. We do not retain jurisdiction.

/s/ Jane M. Beckering  
/s/ William C. Whitbeck  
/s/ Michael J. Kelly

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<sup>29</sup> Because we conclude that Jamison and Jenkins did not have a domestic relationship, we refrain from determining the extent, if any, that it was exploited.

<sup>30</sup> See MCL 777.16d.

<sup>31</sup> MCL 777.65.

<sup>32</sup> See *id.*

<sup>33</sup> See *Jackson*, 487 Mich at 792.