

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

MARY MARGARITE COOK,

Defendant-Appellant.

UNPUBLISHED

May 24, 2005

No. 252097

Kalamazoo Circuit Court

LC No. 03-000441-FC

Before: Murphy, P.J., and White and Smolenski, JJ.

MEMORANDUM.

Defendant was convicted by a jury of one count of first-degree home invasion, MCL 750.110a(2), two counts of assault with intent to rob, MCL 750.89, five counts of armed robbery, MCL 750.529, and one count of conspiracy to commit armed robbery, MCL 750.157(a). She was sentenced to concurrent terms of thirteen to twenty years' imprisonment for the home invasion conviction and fifteen to forty years' imprisonment for the remaining convictions. Defendant appeals as of right, arguing that she was denied the effective assistance of counsel at sentencing and that an error in calculating her sentence resulted in a disproportionate sentence. We affirm.

Because defendant's claim is that her sentence was beyond the appropriate guidelines, her allegation of a scoring error is reviewable absent an objection in the trial court. *People v Kimble*, 470 Mich 305, 309-310; 684 NW2d 669 (2004). However, because defendant neither moved for a new trial nor for an evidentiary hearing, her claim of ineffective assistance of counsel is limited to errors by counsel evident on the record. *People v Rodriguez*, 251 Mich App 10, 38; 650 NW2d 96 (2002).

We find that there was no scoring miscalculation and, consequently, no error on the part of defense counsel at sentencing. Defendant was assessed fifty points under OV 7. Defendant participated in an armed robbery. The gunman threatened to kill the victims and even fired a shot into the wall. Defendant encouraged the gunman to kill the victims. The evidence, therefore, supports the sentencing court's conclusion that defendant's actions were designed to increase the victims' fear and anxiety.

Affirmed.

/s/ William B. Murphy
/s/ Helene N. White
/s/ Michael R. Smolenski