

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

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JASON DALE BAILEY,

Defendant-Appellant.

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UNPUBLISHED

August 23, 2005

No. 254131

Berrien Circuit Court

LC No. 03-400159-FC

Before: Zahra, P.J., and Cavanagh and Owens, JJ.

MEMORANDUM.

Defendant appeals by leave granted from his plea-based conviction of armed robbery, MCL 750.529. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant and an accomplice approached two supermarket store employees and robbed them at gunpoint. According to the presentence information report, one of the victims stated that the handgun was “a silver or chrome large frame gun.” The other victim also stated that a gun was pointed at the pair. Defendant, who later admitted his participation in the robbery, told the police that the gun was an inoperative pellet gun. The weapon was never recovered, apparently because defendant threw the weapon into a pond.

Defendant maintains that the trial court erred when it scored Offense Variable (OV) 1, MCL 777.31, aggravated use of weapon, at fifteen points. We disagree.

The legislative sentencing guidelines apply to offenses committed on or after January 1, 1999. MCL 769.34(2). We must affirm minimum sentences within the guidelines range unless there was an error in scoring the guidelines or inaccurate information relied on in determining the sentence. MCL 769.34(10); *People v Leverage*, 243 Mich App 337, 348; 622 NW2d 325 (2000). The sentencing court’s scoring of the guidelines is reviewed for an abuse of discretion. We will affirm the trial court’s scoring decision if there is any evidence in the record to support a particular score. *People v Hornsby*, 251 Mich App 462, 468; 650 NW2d 700 (2002).

MCL 777.31 provides in pertinent part that fifteen points shall be scored if “a firearm was pointed at or toward a victim or the victim had a reasonable apprehension of an immediate battery when threatened with a knife or other cutting or stabbing weapon.” MCL 777.31(1)(c). “Firearm” is not defined in MCL 777.31. However, MCL 8.3t provides:

The word “firearm”, except as otherwise specifically defined in the statutes, shall be construed to include any weapon from which a dangerous projectile may be propelled by using explosives, gas or air as a means of propulsion, except any smooth bore rifle or handgun designed and manufactured exclusively for propelling BB’s not exceeding .177 caliber by means of spring, gas or air.

A trial court is entitled to rely on information contained in the PSIR, which is presumed to be accurate unless the defendant effectively challenges the accuracy of the factual information. *People v Grant*, 455 Mich 221, 233; 565 NW2d 389 (1997). The victims’ statements provided a factual basis for finding that the pistol was, indeed, a handgun. The trial court was not required to find defendant’s statement to the contrary credible. Moreover, defendant admitted that the pistol he used was a pellet pistol. A pellet pistol is a firearm under MCL 8.3t.

Affirmed.

/s/ Brian K. Zahra  
/s/ Mark J. Cavanagh  
/s/ Donald S. Owens