

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

V

JASON BROWN,

Defendant-Appellant.

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UNPUBLISHED

March 23, 2006

No. 258567

Wayne Circuit Court

LC No. 99-001485-01

Before: Hoekstra, P.J., and Wilder and Zahra, JJ.

MEMORANDUM.

Defendant appeals as of right his sentences of five to ten years in prison for carjacking, MCL 750.529a, and armed robbery, MCL 750.529. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

The trial court sentenced defendant to concurrent terms of 130 months to eighteen years in prison. In *People v Brown*, unpublished opinion per curiam of the Court of Appeals, issued February 11, 2003 (Docket No. 236317), this Court affirmed defendant's convictions, but remanded for further factfinding related to the scoring of Offense Variable (OV) 13, MCL 777.43, continuing pattern of criminal behavior.

On remand, the trial court concluded that OV 13 should be scored at zero points rather than at twenty-five points. The revised guidelines recommended a minimum term range of forty-two to seventy months. The trial court sentenced defendant to concurrent terms of five to ten years in prison, with credit for 1,472 days served.

Defendant argues that he is entitled to resentencing because in fashioning his sentences, the trial court relied on facts not found beyond a reasonable doubt by the jury as required by *Blakely v Washington*, 542 US 296; 124 S Ct 2531; 159 L Ed 2d 403 (2004). We disagree and affirm defendant's sentences. Our Supreme Court has stated that *Blakely, supra*, does not apply to Michigan's system of indeterminate sentencing because under that system, the maximum term is not set by the sentencing court, but rather is determined by statute. MCL 769.8(1); *People v Claypool*, 470 Mich 715, 730 n 14; 684 NW2d 278 (2004). We are bound by the statement in

*Claypool, supra. People v Drohan*, 264 Mich App 77, 89 n 4; 689 NW2d 750 (2004), lv gtd in part 472 Mich 881 (2005).<sup>1</sup> *Blakely, supra*, does not entitle defendant to resentencing.

Affirmed.

/s/ Joel P. Hoekstra  
/s/ Kurtis T. Wilder  
/s/ Brian K. Zahra

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<sup>1</sup> Our Supreme Court granted leave in *Drohan, supra*, to consider whether *Blakely, supra*, and *United States v Booker*, 543 US 220; 125 S Ct 738; 160 L Ed 2d 621 (2005), apply to Michigan's sentencing scheme. That appeal is still pending; thus, *Claypool, supra*, continues to control on this issue.