

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ALFONZO THOMAS,

Defendant-Appellant.

UNPUBLISHED

March 29, 2007

No. 268694

Wayne Circuit Court

LC No. 04-012891-01

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

PER CURIAM.

Defendant appeals as of right from the sentence of two and one-half to seven and one-half years in prison imposed on his conviction of felon in possession of a firearm, MCL 750.224f, after a bench trial. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant was originally charged with three counts of first-degree murder, MCL 750.316, one count of assault with intent to commit murder, MCL 750.82, felon in possession of a firearm, and possession of a firearm during the commission of a felony, MCL 750.227b, as a result of an incident at a drug house in which three persons were shot and killed and one person was wounded. Shon Love testified that a man carrying an AK-47 approached the house and placed the muzzle of the weapon through the doorway. Love's uncle attempted to prevent the man from entering the house. Defendant and another person were inside the house, and drew weapons, pointed the weapons at Love and his uncle, and began yelling. Love heard numerous shots, and was wounded in the incident.

The trial court acquitted defendant of the charges of first-degree murder and assault with intent to commit murder, reasoning that the evidence did not support a finding that defendant acted in concert with the armed man. The trial court convicted defendant of felon in possession of a firearm and felony-firearm.

At sentencing, defendant challenged the scoring of Offense Variable (OV) 9, MCL 777.39, number of victims, at ten points on the basis that two to nine victims were placed in danger of injury or death as a result of his actions. Defendant argued that the offenses of which he had been convicted, felon in possession of a firearm and felony-firearm, did not have specific victims. The trial court disagreed, noting that the evidence showed that defendant displayed a weapon and pointed it at two persons during the incident. The guidelines, adjusted for the

supplemental charge of habitual offender, second offense, MCL 769.10, recommended a minimum term range of 12 to 30 months for felon in possession of a firearm.

The trial court declined a request by Sharon Love, the sister of two of the murder victims, to place a statement on the record, but read a letter she submitted for consideration. The trial court sentenced defendant to two years in prison for felony-firearm, with credit for 465 days, and as a second habitual offender to two and one-half to seven and one-half years in prison for felon in possession of a firearm.

We review a trial court's sentencing decisions for an abuse of discretion. *People v McLaughlin*, 258 Mich App 635, 671; 672 NW2d 860 (2003). We must affirm a minimum sentence that is within the appropriate sentencing guidelines range absent an error in the scoring of the guidelines or inaccurate information relied on by the trial court in determining the sentence. MCL 769.34(10); *People v Kimble*, 470 Mich 305, 309; 684 NW2d 669 (2004).

Defendant argues that the trial court abused its discretion by considering the letter submitted by Sharon Love because he was acquitted of murder. Defendant claims that the trial court was influenced by the letter, improperly assumed that he was guilty of murder, and sentenced him at the high end of the guidelines. Defendant concludes that he is entitled to be resentenced on his conviction of felon in possession of a firearm before a different judge. We disagree.

The record does not make clear whether Sharon Love met the statutory definition of a victim, MCL 780.752(1), but that question is not determinative of the issue before us. A trial court cannot make an independent finding of guilt of and sentence upon a crime other than that for which the defendant is scheduled to be sentenced. *People v Dixon*, 217 Mich App 400, 410; 552 NW2d 663 (1996). However, a trial court may consider a broad range of information when weighing sentencing factors. *People v Adams*, 430 Mich 679, 686; 425 NW2d 437 (1988). The trial court read the letter from Sharon Love, but did not refer to the letter when it sentenced defendant. Defendant's assertion that the trial court "could not have ignored the impact of the letter" is based on speculation. The trial court did not indicate that it had concluded that defendant was guilty of the murders, and in fact repeated its reasons for acquitting defendant of the murder charges. The trial court sentenced defendant to a minimum term within the guidelines for felon in possession of a firearm. As we explain below, we conclude that the guidelines were correctly scored. Defendant is not entitled to be resentenced. MCL 769.34(10); *Kimble, supra*.

In calculating the sentencing guidelines, the trial court has discretion to determine the number of points to be scored, provided that evidence in the record supports a particular score. A scoring decision for which there is any evidence in the record will be upheld. *People v Hornsby*, 251 Mich App 462, 468; 650 NW2d 700 (2002).

Defendant argues that the trial court abused its discretion by scoring OV 9 at ten points because no evidence showed that two or more persons were put in fear of injury or death by his act of displaying a weapon during the incident in the drug house. Defendant asserts that had OV 9 been scored correctly at zero points, the sentencing guidelines would have recommended a minimum term range of ten to 28 months, and that because his minimum term of 30 months exceeded that range, he is entitled to be resentenced. We disagree.

In assessing points for OV 9, a court must count as a victim each person who was put in danger of injury or loss of life. MCL 777.39(2)(a). Shon Love testified that defendant and another person displayed weapons and pointed the weapons at him and his uncle. Defendant was carrying either a nine-millimeter or a .45 caliber weapon. Forensic evidence established that a nine-millimeter shell casing was found inside the residence. This evidence provided the requisite support for the trial court's finding that OV 9 should be scored at ten points. *Hornsby, supra*.

Affirmed.

/s/ Brian K. Zahra
/s/ Richard A. Bandstra
/s/ Donald S. Owens