

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

SAMUEL MORA,

Defendant-Appellant.

UNPUBLISHED

March 4, 2008

No. 272733

Oakland Circuit Court

LC No. 2005-204023-FC

Before: White, P.J., and Hoekstra and Schuette, JJ.

MEMORANDUM.

Defendant was convicted by a jury of conspiracy to deliver or possess with intent to deliver 1,000 or more grams of cocaine, MCL 750.157a, and possession with intent to deliver 1,000 or more grams of cocaine, MCL 333.7401(2)(a)(i). He was sentenced to concurrent prison terms of 285 months to 45 years for each conviction. He appeals as of right, asserting that the trial court erroneously scored ten points for prior record variable (PRV) 5 of the sentencing guidelines. We vacate defendant's sentences and remand for resentencing.

We review the trial court's scoring of the sentencing guidelines to determine if there is any evidence in the record to support the trial court's score. *People v Hornsby*, 251 Mich App 462, 468; 650 NW2d 700 (2002). The trial court scored ten points for PRV 5 (offender has three or four prior misdemeanor convictions). MCL 777.55(1)(c). Although the presentence report indicates that defendant has six prior misdemeanor convictions, four of those convictions involve offenses that do not fall within any of the categories of offenses that may be scored for purposes of PRV 5. Only defendant's prior convictions for resisting or obstructing a police officer and drunk driving may be scored under PRV 5. MCL 777.55(2)(a) and (b). Therefore, PRV 5 should have been scored at five points (offender has two prior misdemeanor convictions), instead of ten. MCL 777.55(1)(d). Because the scoring error affects defendant's sentencing guidelines range, and because defendant's sentences are outside the appropriate range, we vacate defendant's sentences and remand for resentencing. *People v Francisco*, 474 Mich 82, 89-90; 711 NW2d 44 (2006).

Remanded for resentencing. We do not retain jurisdiction.

/s/ Helene N. White

/s/ Joel P. Hoekstra

/s/ Bill Schuette