

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff-Appellee,

UNPUBLISHED
September 16, 2014

v

JODY JAMES ENGLISH,
Defendant-Appellant.

No. 316833
Calhoun Circuit Court
LC No. 2012-001296-FH

Before: MURRAY, P.J., and DONOFRIO and BORRELLO, JJ.

PER CURIAM.

Defendant pleaded no contest to one count of accosting a child for immoral purposes, MCL 750.145a, and one count of indecent exposure, MCL 750.335a(1). The plea left open whether defendant was a sexually delinquent person, MCL 750.335a(2)(c), of which defendant was found guilty following a bench trial. The court sentenced defendant to concurrent terms of 16 to 24 months' imprisonment for accosting a minor and 135 to 270 months' imprisonment for indecent exposure by a sexually delinquent person, with 28 days credit awarded. We affirm.

Defendant's argument on appeal is that OV 12, which was scored at 25 points, should have been scored at zero points. He preserved this argument by filing a timely motion to remand with this Court, which was denied.¹ MCR 6.429(C). On review, a sentencing court's factual determinations must be supported by a preponderance of the evidence and are reviewed for clear error. *People v Hardy*, 494 Mich 430, 438; 835 NW2d 340 (2013). Whether the facts as found "satisfy the scoring conditions prescribed by statute, i.e., the application of the facts to the law, is a question of statutory interpretation, which an appellate court reviews de novo." *Id.*

OV 12 is scored for contemporaneous felonious criminal acts. MCL 777.42(1). If three or more contemporaneous crimes against a person were committed, then 25 points are scored. MCL 777.42(1)(a). Zero points are scored if no contemporaneous felonious criminal acts were committed. MCL 777.42(1)(g). For the act to be contemporaneous it must have both "occurred within 24 hours of the sentencing offense" and "will not result in a separate conviction." MCL

¹ *People v English*, unpublished order of the Court of Appeals, entered November 15, 2013 (Docket No. 316833).

777.42(2)(a)(i)-(ii). Here, the terms of defendant's plea indicate that two of the four charged counts in the appealed case were dismissed, as was a second case for possession of child pornography.

Defendant concedes on appeal that he "was found in possession of child pornography on his computer, and arguably could be charged with disseminating sexually explicit matter." Defendant's sole argument on appeal is that "this offense" is a crime against public order and not a crime against a person, which would not implicate scoring 25 points under OV 12. Defendant cites to *People v Wiggins*, 289 Mich App 126; 795 NW2d 232 (2010), as authority that his other contemporaneous crimes were against public order and not a person. But *Wiggins* merely addressed that the Legislature in MCL 777.15(d) categorized the particular crime of disseminating sexually explicit material to a minor, MCL 722.675, as a crime against public order. *Id.* at 130. Defendant fails to recognize that his concurrent crimes did not involve disseminating sexually explicit materials to children; instead, his crimes involved possessing child pornography. And possessing child pornography in violation of MCL 750.145c(4) is categorized as a crime against a person. MCL 777.16g. Therefore, defendant's claim that his contemporaneous crimes were against the public order is without merit, and the trial court did not err in scoring OV 12 at 25 points.

Affirmed.

/s/ Christopher M. Murray
/s/ Pat M. Donofrio
/s/ Stephen L. Borrello