

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

RANIS TAWON HILL,

Defendant-Appellant.

UNPUBLISHED

September 27, 2005

No. 256184

Jackson Circuit Court

LC No. 03-000258-FH

Before: Sawyer, P.J., and Talbot and Borrello, JJ.

PER CURIAM.

Defendant was charged with one count of uttering and publishing, MCL 750.249, for his attempt to cash a \$350 check drawn on Flagstar Bank, that listed Lilly Sill as the drawer or maker, and Shontell Hill as the payee and endorser. Following a jury trial before Jackson Circuit Judge Edward J. Grant, defendant was convicted and sentenced as an habitual offender, second offense, MCL 769.10, to 28 to 252 months' imprisonment. Defendant appeals as of right. We affirm.

Defendant argues that the trial court erred when it increased the scores for PRV 7 and OV 13 for defendant's convictions at a trial that concluded the day before his sentencing hearing. Defendant contends that the five additional felony counts were not included in his PSIR, and that there were no dates or lower court file number preserved in the record for these convictions and no reference to pending criminal charges against defendant. We review defendant's preserved objection to the scoring of PRV 7 for an abuse of discretion. *People v Apgar*, 264 Mich App 321, 329; 690 NW2d 312 (2004). However, because defendant did not object to the scoring of OV 13 at sentencing or in a proper motion for remand or resentencing, he may not raise it on appeal. MCL 769.34(10).

The statutory sentencing guidelines set forth at MCL 777.1 et seq., apply to the present case, as the offenses occurred after January 1, 1999. MCL 769.34(2), *People v Hegwood*, 465 Mich 432, 438-439; 636 NW2d 127 (2001). Under the sentencing guidelines act, a court must impose a sentence in accord with the appropriate sentence range. MCL 769.34(2), *Hegwood*, *supra* at 439. The sentencing court has discretion in determining the number of points scored provided there is evidence on the record that adequately supports a particular score. *People v Hornsby*, 251 Mich App 462, 468; 650 NW2d 700 (2002). If the minimum sentence imposed is within the guidelines range, this Court must affirm and may not remand for resentencing absent an error in the scoring of the guidelines or inaccurate information relied on in determining the

defendant's sentence. MCL 769.34(10), *People v Babcock*, 469 Mich 247, 261; 666 NW2d 231 (2003). An error in scoring the sentencing guidelines that does not affect the total OV score enough to change the applicable sentencing guidelines' range is harmless. *People v Johnson*, 202 Mich App 281, 290; 508 NW2d 509 (1994).

At defendant's sentencing hearing, the trial court changed defendant's score for PRV 7 from zero to twenty points. MCL 777.57 provides that points be scored for subsequent or concurrent felony convictions as follows: twenty points are assigned for two or more such convictions, and ten points are scored for one such conviction. MCL 777.57(2)(a) provides, "[s]core the appropriate point value if the offender was convicted of multiple felony counts or was convicted of a felony after the sentencing offense was committed." The trial court noted on the record that "yesterday, upon jury trial, you[re] convicted of 5 additional felon[ies]—uttering and publishing, forgery, conspiracy to utter and publish, using the computer to commit a crime, [and] obtaining personal information about others without their authorization." While defendant's PSIR contains no information regarding the other then-pending charges against defendant from which the five additional convictions arose, the record in Docket No. 256984, which is also on appeal to this Court, confirms this information. The trial court correctly scored PRV 7 at twenty points because defendant had two or more subsequent convictions when he was sentenced. MCL 777.57(1)(a).

The trial court also changed defendant's score for OV 13 from zero to ten points. This factor addresses a continuing pattern of criminal behavior, and ten points are scored when "[t]he offense was part of a pattern of felonious criminal activity involving a combination of 3 or more crimes against a person or property." MCL 777.43(1)(c). All crimes within a five-year period must be considered, regardless of whether a conviction resulted. MCL 777.43(2)(a). As noted above, defendant was convicted of five additional felony charges the day before his sentencing. Even though defendant is not entitled to review of the scoring of this variable, we nonetheless conclude that the trial court did not err when it scored ten points for OV 13.

Affirmed.

/s/ David H. Sawyer
/s/ Michael J. Talbot
/s/ Stephen L. Borrello