

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

LARRY DANIELS,

Defendant-Appellant.

UNPUBLISHED

October 18, 2005

No. 256304

Wayne Circuit Court

LC No. 04-003591-01

Before: Talbot, P.J., and White and Wilder, JJ.

MEMORANDUM.

Defendant was found guilty after a bench trial of second-degree home invasion, MCL 750.110a(3), and aggravated stalking, MCL 750.411i. He was sentenced as a third habitual offender, MCL 769.11, to concurrent prison sentences of three to fifteen years for the home invasion conviction and one and one-half to five years for the stalking conviction. Defendant appeals his sentences as of right and we affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant argues that he is entitled to resentencing because the trial court increased his statutory sentencing guidelines range on the basis of facts not found by the jury, contrary to *Blakely v Washington*, 542 US ___; 124 S Ct 2531; 159 L Ed 2d 403 (2004). We disagree. In *People v Claypool*, 470 Mich 715, 730 n 14; 684 NW2d 278 (2004), our Supreme Court stated that *Blakely, supra*, is inapplicable to Michigan's indeterminate sentencing scheme. *Claypool, supra*, is binding precedent on this point. *People v Drohan*, 264 Mich App 77, 89 n 4; 689 NW2d 750 (2004), lv gtd ___ Mich ___;(2005). We similarly conclude that the United States Supreme Court's recent decision in *United States v Booker*, ___ US ___; 125 S Ct 738; 160 L Ed 2d 621 (2005), is inapplicable. Like the sentencing scheme in *Blakely, supra*, *Booker, supra* dealt with the application of the federal sentencing guidelines to a determinate sentencing scheme, and not to an indeterminate sentencing scheme such as that in effect in Michigan. Cf. *McMillan v Pennsylvania*, 477 US 79, 81; 91 L Ed 2d 67; 106 S Ct 2411 (1986) (finding no Sixth Amendment violation as applied to Pennsylvania's indeterminate sentencing scheme). Therefore, defendant has not shown that he is entitled to resentencing because the trial court increased the statutory sentencing guidelines range based upon facts not decided by a jury.

Affirmed.

/s/ Michael J. Talbot

/s/ Helene N. White

/s/ Kurtis T. Wilder