

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JACQUELINE MARIE CAMERON,

Defendant-Appellant.

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UNPUBLISHED  
February 14, 2006

No. 256844  
Oakland Circuit Court  
LC No. 02-185019-FH

Before: Meter, P.J., Whitbeck, C.J., and Schuette, J.

PER CURIAM.

Defendant appeals as of right from sentences of six years, three months to twenty years and two to four years imposed on convictions of first-degree home invasion, MCL 750.110a(2), and felonious assault, MCL 750.82, respectively. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

**I. FACTS**

Defendant was charged with home invasion and two counts of felonious assault for an incident with her mother and stepfather that occurred on January 9, 2002. After a jury trial, defendant was found guilty of home invasion and one count of felonious assault on her stepfather. At sentencing, two sentencing information reports (SIRs) were prepared, one indicating that the guidelines for home invasion were thirty to fifty months, and the other indicating that the guidelines for home invasion were fifty-one to eighty-five months. The trial court sentenced defendant as noted above. In a previous appeal to this Court, *People v Cameron*, unpublished opinion per curiam of the Court of Appeals, issued May 11, 2004 (Docket No. 247049), defendant's convictions were affirmed, but the Court remanded for resentencing. This Court noted that the trial court signed the SIR with the thirty to fifty month guideline range, and therefore, assumed that this was the SIR used at sentencing. This Court further concluded that resentencing was necessary because the trial court did not indicate that it was departing from the guidelines or offer any reasons for a departure.

At resentencing, the trial court implied that the SIR which indicated the guideline range was thirty to fifty months was signed by mistake and utilized the SIR with the guidelines scored at fifty-one to eighty-five months. Defendant challenged offense variables (OVs) 1, 2, 12, and 13. The prosecutor agreed that OV 12 was incorrectly scored, but the trial court upheld the scoring for the other OVs. Although defendant requested a downward departure, the trial court

again sentenced defendant to concurrent sentences of six years, three months to twenty years' imprisonment on the home invasion conviction and two to four years' imprisonment on the felonious assault conviction.

## II. SCORING OF SENTENCING GUIDELINES

### A. Standard of Review

“A sentencing court has discretion in determining the number of points to be scored provided that evidence of record adequately supports a particular score.” *People v Hornsby*, 251 Mich App 462, 468; 650 NW2d 700 (2002). A scoring decision “for which there is any evidence in support will be upheld.” *People v Elliott*, 215 Mich App 259, 260; 544 NW2d 748 (1996). “Where effectively challenged, a sentencing factor need be proved only by a preponderance of the evidence.” *People v Harris*, 190 Mich App 652, 663; 476 NW2d 767 (1991). We review the scoring to determine whether the sentencing court properly exercised its discretion and whether the evidence adequately supported a particular score. *People v McLaughlin*, 258 Mich App 635, 671; 672 NW2d 860 (2003).

### B. Analysis

We find no error in the scoring of Offense Variables (OV) 1 and 2. MCL 777.31; MCL 777.32. While it was defendant's contention that she was “armed” with a cigarette lighter in the shape of a handgun, her stepfather, who had some familiarity with weapons from his military service, testified that the item was an actual gun and that defendant pointed it at him. There was evidence in the record indicating that defendant pointed an actual pistol at her stepfather, and therefore, the trial court properly scored OV 1 at fifteen points and OV 2 at five points.

We further find no error in the scoring of OV 13. MCL 777.43. Defendant was convicted of home invasion and one count of felonious assault, which are both crimes against persons. MCL 777.16d; MCL 777.16f. Although defendant was acquitted of a second count of felonious assault, the evidence was also sufficient to support a finding that she committed the offense. “[T]he scoring of the guidelines need not be consistent with the jury verdict . . . .” *People v Perez*, 255 Mich App 703, 712; 662 NW2d 446 (2003), vacated in part on other grounds 469 Mich 415 (2003). Further, three or more contemporaneous offenses are sufficient to constitute a pattern of criminal activity. *People v Harmon*, 248 Mich App 522, 532; 640 NW2d 314 (2001). The trial court properly scored OV 13 at twenty-five points.

Defendant contends that all challenges to the scoring of the guidelines should have been resolved by the trier of fact in accordance with *Blakely v Washington*, 542 US 296; 124 S Ct 2531; 159 L Ed 2d 403 (2004). In *People v Claypool*, 470 Mich 715; 684 NW2d 278 (2004), a majority of justices agreed that because Michigan has an indeterminate sentencing system in which the trial court cannot determine or exceed the maximum sentence, its system is not affected by the *Blakely, supra*, decision. We followed *Claypool* in *People v Wilson*, 265 Mich App 386, 399; 695 NW2d 351 (2005), and *People v Drohan*, 264 Mich App 77, 89 n 4; 689 NW2d 750 (2004), lv gtd 472 Mich 881 (2005). Until such time as the Supreme Court rules otherwise, those decisions constitute binding precedent. MCR 7.215(J)(1).

There was no error in the scoring of the guidelines and defendant's minimum sentence for home invasion was within the applicable guidelines range. Therefore, her sentence is not reviewable for proportionality. *People v Pratt*, 254 Mich App 425, 429-430; 656 NW2d 866 (2002).

Affirmed.

/s/ Patrick M. Meter  
/s/ William C. Whitbeck  
/s/ Bill Schuette