

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

KENNETH LEE KOCHER, II,

Defendant-Appellant.

UNPUBLISHED

May 22, 2007

No. 269038

Kalamazoo Circuit Court

LC No. 02-001852-FC

Before: White, P.J., and Saad and Murray, JJ.

PER CURIAM.

Defendant appeals as of right from his sentence of 46 years, 10 months to 90 years in prison imposed on his conviction of second-degree murder, MCL 750.317. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant was convicted of second-degree murder in the death of Terry DeHollander.¹ The statutory sentencing guidelines recommended a minimum term range of 22 years, six months to 46 years, 10 months. The trial court sentenced defendant to 48 to 90 years in prison.

In *People v Kocher*, unpublished per curiam opinion of the Court of Appeals, issued December 28, 2004 (Docket No. 246413), another panel of this Court affirmed defendant's conviction, but remanded for resentencing on the ground that the trial court exceeded the sentencing guidelines without articulating substantial and compelling reasons for doing so.

On remand, the sentencing guidelines remained unchanged. Defendant did not object to the scoring of the guidelines at sentencing. The trial court sentenced defendant to 46 years, 10 months to 90 years in prison, with credit for 1,356 days.

If a minimum sentence is within the appropriate sentencing guidelines range, this Court must affirm the sentence and may not remand for resentencing absent an error in the scoring of

¹ The prosecution alleged that Jeff Rurka stabbed the victim numerous times, and that defendant slit the victim's throat. Rurka was convicted of first-degree murder, MCL 750.316, and in *People v Rurka*, unpublished per curiam opinion of the Court of Appeals, issued December 21, 2004 (Docket No. 251315), another panel of this Court affirmed Rurka's conviction.

the guidelines or inaccurate information relied on by the trial court in determining the sentence. MCL 769.34(10); *People v Kimble*, 470 Mich 305, 309; 684 NW2d 669 (2004). A party may not raise on appeal an issue challenging the scoring of the guidelines or challenging the accuracy of the information relied upon in determining a sentence that is within the appropriate guidelines range unless the party has raised the issue at sentencing, in a proper motion for resentencing, or in a proper motion to remand. MCL 769.34(10); *Kimble, supra*.

Defendant argues that he is entitled to resentencing because the trial court misscored several offense variables based on facts that were not found beyond a reasonable doubt, as required by *Blakely v Washington*, 542 US 296; 124 S Ct 2531; 159 L Ed 2d 403 (2004). We disagree.

Defendant did not object to the scoring of the guidelines at sentencing, and he neither moved for resentencing nor filed a proper motion to remand. Thus, the issue is not preserved, and we review for plain error. *People v Carines*, 460 Mich 750, 763-764; 597 NW2d 130 (1999). Defendant's assertion that a jury was required to find the facts on which scoring decisions were based and which resulted in the minimum term range recommended by the guidelines being increased is without merit. The principles articulated in *Blakely, supra*, do not apply to Michigan's indeterminate sentencing scheme. *People v Drohan*, 475 Mich 140, 159-160, 164; 715 NW2d 778 (2006). The trial court imposed a sentence within the guidelines, and defendant has not demonstrated that plain error occurred. Defendant is not entitled to resentencing.

Affirmed.

/s/ Helene N. White
/s/ Henry William Saad
/s/ Christopher M. Murray