

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ROMELL MINNOW PARKER,

Defendant-Appellant.

UNPUBLISHED

June 16, 2009

No. 285890

Kent Circuit Court

LC No. 07-013593-FH

Before: O’Connell, P.J., and Bandstra and Donofrio, JJ.

PER CURIAM.

Defendant appeals as of right the sentence imposed on his bench trial conviction of unarmed robbery, MCL 750.530. In the absence of plain error affecting defendant’s substantial rights and defendant’s waiver of a claim of error on offense variable scoring, we affirm. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

According to the prosecution’s witnesses, defendant and his associate, Halbert Pearson, attempted to steal meat and other items from a supermarket in Grand Rapids. A store security officer, Douglas Theule, testified that he observed defendant and Pearson go to the store’s meat section, pick up a number of steaks, and stuff the steaks inside their coats and pants. Theule confronted the men as they attempted to leave the store. After Theule identified himself, Pearson accompanied him back into the store. Pearson dumped two packages of meat into the aisle and tried to leave, but Theule blocked him. After a short struggle, Theule handcuffed Pearson and had one of the employees take him downstairs.

At approximately the same time, defendant also attempted to leave the store. Theule, who was dealing with Pearson, directed a stock person to follow defendant. Theule later joined in the pursuit of defendant. Defendant first struggled with the stock person, and then stabbed Theule in the chest with a screwdriver, but did not injure Theule. Defendant attempted to escape, but was apprehended by the two store employees.

On appeal, defendant maintains that the trial court erred when it scored Offense Variable (OV) 14 at ten points after determining that the prosecutor presented sufficient evidence that defendant played a leadership role in the robbery. MCL 777.44. Defendant maintains that at most, the evidence supported a finding that he and his codefendant were “simply committing a crime together” and that this does not equate to a finding that he was the leader in the incident.

In general, “[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). “Scoring decisions for which there is any evidence in support will be upheld.” *Id.*, quoting *People v Elliott*, 215 Mich App 259, 260; 544 NW2d 748 (1996).

We conclude that defendant’s claim of error was waived. During sentencing, the trial court, after noting that the presentence investigation report (PSIR) mistakenly stated that defendant was convicted as the result of a plea and that it would correct the error, asked the parties if they had any corrections or modifications to the presentence materials. Defense counsel stated:

Just the one the Court just noted, and then at the conclusion of my remarks to the Court, we will be asking that the jail credit be expanded to two weeks, your Honor.

The trial court then stated that it would change the sentencing date and asked whether counsel had any other corrections or modifications. Counsel replied, “No, sir.” Defense counsel’s statement that he had no objection acted as a waiver by defendant, see *People v Lueth*, 253 Mich App 670, 688; 660 NW2d 322 (2002), and extinguished any claim of error with regard to the scoring of OV 14. *People v Carter*, 462 Mich 206, 215; 612 NW2d 144 (2000). “Because defendant waived . . . his rights . . . there [was] no ‘error’ to review.” *Id.* at 219.

Even if we were to review this issue, we would conclude that defendant is not entitled to relief because he cannot demonstrate plain error affecting his substantial rights. *People v Kimble*, 470 Mich 305, 312; 684 NW2d 669 (2004). Defendant’s codefendant was his younger brother. In addition, defendant was armed with a screwdriver, and the testimony does not reveal that the codefendant was likewise armed. Certainly, defendant’s extremely lengthy criminal history points to his significant experience in this area.¹ And nothing in the testimony suggests that defendant’s brother, who acted far more passively when the theft was discovered, was the leader. Thus, we would find no clear error in the trial court’s scoring decision. Defendant is not entitled to relief.

Affirmed.

/s/ Peter D. O’Connell
/s/ Richard A. Bandstra
/s/ Pat M. Donofrio

¹ Defendant has 58 prior convictions. This was defendant’s thirty-fifth conviction for shoplifting or a related offense.