

STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ROZELL DEVIN WILKES,

Defendant-Appellant.

UNPUBLISHED

June 25, 2009

No. 285252

Wayne Circuit Court

LC No. 07-011451-FC

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

MEMORANDUM.

Defendant appeals as of right his sentences, following his jury trial convictions of voluntary manslaughter, MCL 750.321, and possession of a firearm during the commission of a felony, MCL 750.227b. Defendant was sentenced to seven to fifteen years’ imprisonment for the voluntary manslaughter conviction and two years’ imprisonment for the felony-firearm conviction. We affirm. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

Defendant claims on appeal that MCL 777.33 should be interpreted such that a defendant should be scored zero points for Offense Variable 3 (OV 3), instead of 25 points for causing a life-threatening injury, when, in fact, the victim was killed. However, defendant acknowledges that the Supreme Court, in *People v Houston*, 473 Mich 399; 702 NW2d 530 (2005), previously addressed this precise OV 3 calculation issue when it held that 25 points is the appropriate score for OV 3 when the victim dies from a gunshot wound. Defendant also admits that the sentencing judge did not commit legal error when he scored the 25 points but simply wishes the Supreme Court to reconsider its ruling in *Houston*.

The prosecution argues that defendant waived this issue during sentencing. This Court disagrees. Defendant did not affirmatively express satisfaction with the scoring – he only acknowledged that there was binding Supreme Court precedent. Therefore, this Court can decide the issue on its merits. However, this Court has no power to overrule a decision of our Supreme Court; only the Supreme Court may overrule its prior decisions. *Paige v Sterling Heights*, 476 Mich 495, 524; 720 NW2d 219 (2006). Based on the binding authority of *Houston*, there was no error in calculating 25 points for defendant’s OV 3 score.

We affirm.

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