

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff-Appellee,

UNPUBLISHED
October 4, 2011

v

MAURECE EMANUEL PETERS, SR,
Defendant-Appellant.

No. 299171
Oakland Circuit Court
LC No. 2009-224976-FC

Before: RONAYNE KRAUSE, P.J., and CAVANAGH and JANSEN, JJ.

PER CURIAM.

Defendant appeals by delayed leave granted, challenging only the scoring of certain offense variables (“OVs”). Defendant pleaded guilty to one count of unarmed robbery, MCL 750.530, and one count of second-degree home invasion, MCL 750.110a(3). He was sentenced as a third habitual offender, MCL 769.11, to serve a prison term of 9 to 30 years. We affirm.

Defendant challenges the scoring of OVs 1, 2, 8, and 14. Fifteen points were scored for OV 1, five points for OV 2, 15 points for OV 8, and ten points for OV 14. “A sentencing court has discretion in determining the number of points to be scored [when calculating the sentencing guidelines], provided that evidence of record adequately supports a particular score.” *People v Hornsby*, 251 Mich App 462, 468; 650 NW2d 700 (2002).

Defendant does not dispute that the facts were sufficient to support the scoring of OV 1 and OV 2, but instead argues that scoring both OVs 1 and 2 violates double jeopardy protections. “The Double Jeopardy Clause protects against multiple punishments for the same offense in order to protect the defendant from being sentenced to more punishment than the Legislature intended.” *People v Meshell*, 265 Mich App 616, 628; 696 NW2d 754 (2005).

In a case involving the judicial sentencing guidelines, this Court stated that “the score a defendant receives on an offense variable is not a form of punishment. . . . Because the guidelines are merely a tool for assessing the proper punishment, they are not, in and of themselves, a form of punishment.” *People v Gibson*, 219 Mich App 530, 535; 557 NW2d 141 (1996). Although the legislative sentencing guidelines have the sanction of the Legislature, they nonetheless are only a tool for “ensur[ing] a degree of consistency in sentencing defendants with comparable histories who have committed comparable crimes.” *People v Horn*, 279 Mich App 31, 42-43; 755 NW2d 212 (2008); see, also, *People v Smith*, 482 Mich 292, 302; 754 NW2d 284 (2008). Therefore, the scoring of the OVs does not invite double jeopardy scrutiny. And, in any

case, the two variables address different aspects of the presence of a weapon during the commission of the sentencing offense—aggravated use of a weapon, MCL 777.31(1), and the lethal potential of the weapon possessed or used, MCL 777.32(1).

Defendant also challenges the scoring of OV 8, which addresses whether the victim was asported or held captive. MCL 777.38(1). Fifteen points is appropriate if the “victim was asported to another place of greater danger or to a situation of greater danger or was held captive beyond the time necessary to commit the offense.” MCL 777.38(1)(a). Defendant claims that, when the victim was moved to a bathroom, he was arguably removed from the scene and was not placed in greater danger. However, the victim testified that he was taken from the bathroom into his bedroom, robbed, and then placed in the bedroom closet. Thus, the victim was in a location out of the view of others and was held captive in the bedroom closet beyond the time necessary to complete the robbery. Accordingly, the evidence supported the score of 15 points for OV 8.

Finally, defendant argues that the trial court improperly scored OV 14 at ten points because the evidence did not show that he played a leadership role in the crime. Ten points may be scored under OV 14 if, considering the entire criminal episode, the defendant “was a leader in a multiple offender situation.” MCL 777.44(1)(a); 777.44(2)(a). Here, defendant admitted that he had keys to an apartment where a person lived that he wanted to injure. Although defendant said that he gave the keys to friends, who then entered the apartment and robbed and assaulted the person who lived there, the victim testified that defendant entered his apartment, pointed a gun at him, robbed and assaulted him, and locked him in the closet. Deferring to the court’s superior position to assess witness credibility, MCR 2.613(C), the victim’s testimony adequately supported the scoring of OV 14.

Affirmed.

/s/ Amy Ronayne Krause

/s/ Mark J. Cavanagh

/s/ Kathleen Jansen