

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DAJUAN FURMAN,

Defendant-Appellant.

UNPUBLISHED
October 16, 2012

Nos. 305536; 305538; 305541;
305543

Wayne Circuit Court
LC Nos. 09-027596-FJ;
09-030711-FJ;
09-027592-FJ;
09-027591-FJ

Before: OWENS, P.J., and TALBOT and WILDER, JJ.

PER CURIAM.

In these consolidated appeals, DaJuan Furman appeals by leave granted his guilty plea convictions. In docket no. 305536, Furman pleaded guilty to two counts of armed robbery,¹ conspiracy to commit armed robbery,² and possession of a firearm during the commission of a felony (“felony-firearm”).³ In docket no. 305538, Furman pleaded guilty to armed robbery, assault with the intent to rob while armed,⁴ conspiracy to commit armed robbery, and felony-firearm. In docket no. 305541, Furman pleaded guilty to armed robbery and conspiracy to commit armed robbery. In docket no. 305543, Furman pleaded guilty to two counts of assault with the intent to rob while armed, conspiracy to commit armed robbery, and felony-firearm. We affirm.

Furman’s guilty pleas in all four cases arose out of a series of armed robberies that he and his accomplices committed in the fall of 2009. On February 11, 2010, Furman pleaded guilty to his involvement in the robberies and agreed to cooperate with Detroit police and the Wayne County Prosecutor’s Office, which included providing “truthfull [sic] testimony against everyone involved in committing all robberies and carjackings he has knowledge of at all hearings and trials.” In exchange for his cooperation, the prosecution agreed to dismiss Furman’s felony-

¹ MCL 750.529.

² MCL 750.157a.

³ MCL 750.227b(1).

⁴ MCL 750.89.

firearm charges in docket nos. 305536, 305538, and 305543. Additionally, the prosecution agreed to dismiss all of the charges in docket no. 305541, and to recommend a sentence of 14 to 25 years' imprisonment for each of Furman's convictions. The trial court accepted the plea agreement.

On July 20 and July 26, 2010, Furman testified against Trammanuel Durham, one of his accomplices and the individual who also allegedly shot Furman during one of the robberies. On July 27, 2010, the trial court sua sponte vacated Furman's plea agreement because it determined that Furman did not testify truthfully against Durham.

On July 29, 2010, Furman pleaded guilty to each of the charges at issue in this appeal. In docket no. 305536, Furman was sentenced to concurrent terms of 225 months to 40 years' imprisonment for his armed robbery and conspiracy to commit armed robbery convictions, to be served consecutive to two years' imprisonment for his felony-firearm conviction. In docket no. 305538, Furman was sentenced to concurrent terms of 225 months to 40 years' imprisonment for his armed robbery, assault with the intent to rob while armed, and conspiracy to commit armed robbery convictions, to be served consecutive to two years' imprisonment for his felony-firearm conviction. In docket no. 305541, the trial court sentenced Furman to concurrent terms of 225 months to 40 years' imprisonment for his armed robbery and conspiracy to commit armed robbery convictions. Lastly, in docket no. 305543, the trial court sentenced Furman to concurrent terms of 285 months to 40 years' imprisonment for each of his assault with the intent to rob while armed and conspiracy to commit armed robbery convictions, to be served consecutive to two years' imprisonment for his felony-firearm conviction.

On February 15, 2011, Furman moved for resentencing, or, in the alternative, to withdraw his guilty plea and to reinstate his original guilty plea and sentencing agreement. He raised the same arguments in his motion as he does now on appeal. The trial court denied his motion.

Furman contends that the trial court abused its discretion when it sua sponte vacated his original plea agreement. We disagree. Furman did not object when the trial court vacated his original plea agreement. Then, two days later, Furman pleaded guilty to the originally charged offenses. Because “[a] plea of guilty waives all nonjurisdictional defects in the proceedings[.]” Furman “waived appellate review of this issue,” and relief is not warranted.⁵ That notwithstanding, we will review for an abuse of discretion the trial court's decision to vacate Furman's guilty plea.⁶

A plea may be withdrawn after acceptance but before sentencing “on the defendant's motion or with the defendant's consent only in the interest of justice[.]”⁷ “On the prosecutor's

⁵ *People v Aceval*, 282 Mich App 379, 385 n 3; 764 NW2d 285 (2009) (citation and quotations omitted).

⁶ *People v Strong*, 213 Mich App 107, 111-112; 539 NW2d 736 (1995).

⁷ MCR 6.310(B)(1).

motion, the court may vacate a plea if the defendant has failed to comply with the terms of a plea agreement.”⁸

Furman first argues that he did not violate the terms of his plea agreement. Furman testified consistently to the following facts related to his shooting at both of Durham’s trials: Durham exited the passenger side of the Jeep Commander, which was parked behind the Ford Explorer that Furman had been driving. Furman was no longer in the Explorer because he had gone in pursuit of a robbery victim. As Furman returned to the Explorer, he heard three or four gunshots being fired, at which time he raised his left arm. A bullet then struck Furman’s left arm above his wrist.

At Durham’s first trial on July 20, 2010, Furman initially testified that he did not see where the shots came from or who fired them. He later stated that he saw Durham shoot him and explained that before the shots were fired, he saw Durham pointing a gun in his direction. Furman admitted that he informed the police that as he returned to the vehicle, Durham began shooting at him. Furman further testified that he was hospitalized that evening and Durham visited him in the hospital the next morning. At first, Furman testified that he was sleeping at the time of Durham’s visit. Furman later explained that he did in fact speak with Durham who apologized for shooting him.

On July 26, 2010, at Durham’s second trial, Furman also testified regarding being shot. Furman initially testified that Durham fired the gun that shot him and he did not see anyone else firing a gun at the time. Furman later indicated that he did not see Durham fire the gun, he was not sure where the gun was pointed when it was fired, and did not recall stating that the gun was fired in his direction. Furman, however, later testified that Durham fired at least two shots and had shot him by mistake. Furman further stated that he did not advise the police that Durham began shooting at him as he returned to the vehicle. Instead, Furman indicated that he merely told the police that he heard gunshots and put his arm up. Furman further advised that his mother told him that Durham came to see him at the hospital to apologize; however, Furman was asleep at the time of his visit. Because Furman’s testimony regarding the facts surrounding his shooting was inconsistent and contradictory, the court did not abuse its discretion when it found that Furman failed to testify truthfully against Durham.⁹ Thus, Furman’s argument lacks merit.

Next, Furman asserts that because the plea agreement was not vacated on Furman’s motion or with his consent, or after a motion made by the prosecution, reversal is warranted. While the trial court vacated Furman’s original plea agreement on its own motion, had the prosecution moved accordingly, the trial court made the requisite findings that Furman “failed to comply with the terms” of his plea agreement.¹⁰ Additionally, the prosecution, whose rights the trial court exercised when it vacated Furman’s plea agreement,¹¹ did not object to the trial court’s

⁸ MCR 6.310(E).

⁹ *Strong*, 213 Mich App at 111-112.

¹⁰ MCR 6.310(E).

¹¹ *Id.*

actions. Therefore, because the trial court made the necessary findings to vacate Furman's plea agreement based on his failure to comply with its terms, and reversal of Furman's convictions for failing to comply with the formality of the court rule would elevate form over substance,¹² reversal here is not warranted.¹³

Furman also asserts that the trial court erred when it scored ten points for offense variable ("OV") 14, so resentencing is necessary. We disagree. Furman specifically contends that since his affidavit establishes that he was under duress when the offenses were committed, and thus could not have been the leader, the scoring of OV 14 was based on inaccurate information. We review "a sentencing court's scoring decision to determine whether the trial court properly exercised its discretion and whether the record evidence adequately supports a particular score."¹⁴ To the extent that the resolution of this issue also involves statutory interpretation, it will be reviewed by this Court de novo.¹⁵

Ten points shall be scored for OV 14 if "[t]he offender was a leader in a multiple offender situation[.]"¹⁶ "The entire criminal transaction should be considered when scoring this variable[.]" and "[i]f 3 or more offenders were involved, more than 1 offender may be determined to have been a leader."¹⁷ "A sentencing court has discretion in determining the number of points to be scored, provided that evidence of record adequately supports a particular score."¹⁸ A party may challenge "the scoring of the sentencing guidelines" or "the accuracy of information relied upon in determining a sentence that is within the appropriate guidelines sentence range" "at sentencing, in a proper motion for resentencing, or in a proper motion to remand" filed in this Court.¹⁹

Furman did not challenge the scoring of OV 14 at sentencing, but rather deferred to the prosecution to score the offense variables. Furman later challenged the accuracy of the information relied on to score OV 14 in his motion for resentencing by providing an affidavit in which he asserted that he was an unwilling participant in the crimes because he was acting under duress. The trial court considered his affidavit and determined that in light of the evidence presented in the case, Furman's affidavit was not credible. Because this Court defers to the trial court regarding determinations of witness credibility,²⁰ the trial court did not abuse its discretion

¹² See *People v Spann*, 60 Mich App 48, 53; 230 NW2d 302 (1975).

¹³ *Strong*, 213 Mich App at 111-112.

¹⁴ *People v McLaughlin*, 258 Mich App 635, 671; 672 NW2d 860 (2003).

¹⁵ *People v Wilson*, 265 Mich App 386, 397; 695 NW2d 351 (2005).

¹⁶ MCL 777.44(1)(a).

¹⁷ MCL 777.44(2).

¹⁸ *People v Hornsby*, 251 Mich App 462, 468; 650 NW2d 700 (2002).

¹⁹ MCL 769.34(10); MCR 6.429(C).

²⁰ *People v Shipley*, 256 Mich App 367, 373; 662 NW2d 856 (2003).

when it declined to rescore OV 14 after reviewing Furman's affidavit.²¹ Moreover, our review of the record reveals that the evidence supports scoring OV 14 at ten points.²² Accordingly, resentencing is unnecessary.

Affirmed.

/s/ Donald S. Owens
/s/ Michael J Talbot
/s/ Kurtis T. Wilder

²¹ *McLaughlin*, 258 Mich App at 671.

²² *Hornsby*, 251 Mich App at 468; MCL 777.44(1)(a).