

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

HAROLD LEON BELL,

Defendant-Appellant.

UNPUBLISHED

May 22, 2007

No. 269517

Genesee Circuit Court

LC No. 05-017200-FC

Before: Cooper, P.J., and Murphy and Neff, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of voluntary manslaughter, MCL 750.321, and was sentenced to 7 years and 2 months to 15 years' imprisonment. He appeals as of right. We affirm.

Defendant's conviction arises out of the death of Daniel Furman. At approximately 11:30 p.m. on September 30, 2005, defendant was at a neighbor's house shooting pool and discussing a possible job while Furman was keeping an eye on defendant's 13-month-old daughter at defendant's apartment across the street. Shortly after defendant arrived home, he heard his daughter crying and Furman yelling, "shut up, shut up." As defendant walked out of the restroom, he saw Furman walking away from his daughter and observed red marks on her head. Believing that Furman had just struck his daughter, defendant grabbed a baseball bat and hit Furman with it. Furman died of multiple blunt force injuries, which also triggered a heart attack.

Defendant argues that he is entitled to resentencing because offense variables (OVs) 5, 7, and 10 were incorrectly scored. A sentencing court has discretion in determining the number of points to be assessed for each variable, provided that record evidence adequately supports a given score. *People v Endres*, 269 Mich App 414, 417; 711 NW2d 398 (2006). "Scoring decisions for which there is any evidence in support will be upheld." *Id.*

Initially, defendant contends that our Supreme Court in *People v Drohan*, 475 Mich 140, 142-143; 715 NW2d 778 (2006), overruled the "any evidence" standard recited above. There, the Court recognized that Michigan's indeterminate sentencing scheme "allows a trial court to

set a defendant's minimum sentence on the basis of factors determined by a preponderance of the evidence" *Id.* We find it unnecessary to determine whether *Drohan* modified the law with regard to the applicable evidentiary standard relative to the scoring of the sentencing variables.¹ Even if the "preponderance of the evidence" standard controls, defendant is still not entitled to resentencing.

OV 7, MCL 777.37(1)(a), allows for the scoring of 50 points if "[a] victim was treated with sadism, torture, or excessive brutality or conduct designed to substantially increase the fear and anxiety a victim suffered during the offense." The trial court scored 50 points under OV 7 based on its determination that defendant's conduct was designed to substantially increase the fear and anxiety that Furman suffered during the offense. We question whether the facts supported this conclusion; however, a score of 50 points under OV 7 would nonetheless be appropriate because defendant engaged in excessive brutality. The evidence showed that defendant struck Furman at least five times with a metal baseball bat. Furman suffered a large tear of the skin to his left ear, bleeding into his scalp, and damage to the surface of his brain in that area. His left shoulder and upper back were bruised, and he was bleeding under the surface of his skin in those areas. The medical examiner also found evidence of bruising in his scalp on the right side of his head and opined that Furman died of multiple blunt force injuries which triggered a heart attack. Thus, the record shows that there was a preponderance of evidence establishing that Furman was treated with excessive brutality. Assuming that the trial court scored 50 points under OV 7 on an incorrect basis, we will not reverse a trial court's correct result reached for the wrong reason. *People v Witherspoon*, 257 Mich App 329, 335; 670 NW2d 434 (2003).

Defendant next argues that the trial court improperly scored 15 points under OV 5, which allows the scoring of 15 points if "[s]erious psychological injury requiring professional treatment occurred to a victim's family." MCL 777.35(1)(a). Under this variable, 15 points shall be scored if the serious psychological injury "may require professional treatment," and "the fact that treatment has not been sought is not conclusive." MCL 777.35(2) (emphasis added).

In light of the statements and testimony by members of Furman's family and their difficult emotional struggles to deal with his horrific and violent death, the trial court properly scored 15 points under OV 5, whether under an "any evidence" or "preponderance of the evidence" standard.

Defendant also argues that the trial court improperly scored five points under OV 10, regarding exploitation of a vulnerable victim. See MCL 777.40(1)(c). Even if defendant is correct, his OV level would remain at VI and his sentencing guidelines range would remain at 43 to 86 months. Thus, because any scoring error did not affect defendant's sentencing guidelines range, he is not entitled to resentencing. Under MCL 769.34(10), this Court must affirm a sentence if the minimum sentence is within the appropriate guidelines sentence range. *Endres*,

¹ The focus in *Drohan* was not on the appropriate evidentiary standard relative to scoring the guidelines; rather, *Drohan* addressed the constitutionality of our sentencing scheme with regard to the right to a jury trial.

supra at 417. Defendant's minimum sentence was within the guidelines range. Accordingly, because the alleged error would not have affected the sentencing guidelines range, this Court must affirm defendant's sentence. Cf. *People v Francisco*, 474 Mich 82, 91-92; 711 NW2d 44 (2006) (because scoring error affected appropriate guidelines range, the defendant was entitled to resentencing).

Affirmed.

/s/ Jessica R. Cooper
/s/ William B. Murphy
/s/ Janet T. Neff