

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JAMES EDWARD SHORTY, JR.,

Defendant-Appellant.

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UNPUBLISHED  
February 10, 2005

No. 250370  
Saginaw Circuit Court  
LC No. 01-020938-FC

Before: Talbot, P.J., Whitbeck, C.J., and Jansen, J.

PER CURIAM.

Defendant appeals as of right from his conviction for bank robbery, MCL 750.531, carrying a dangerous weapon with unlawful intent, MCL 750.226, and carjacking, MCL 750.529a. Defendant was sentenced as a third habitual offender, MCL 769.11, to concurrent terms of imprisonment of eighty-five months to fifty years for the bank robbery conviction and six to ten years for the conviction carrying a dangerous weapon with unlawful intent. Defendant was also sentenced as third habitual offender to 202 months' to fifty years' imprisonment for the carjacking conviction, to be served consecutively to his other sentences. We affirm. This case is being decided without oral argument pursuant to MCR 7.214(E).

Defendant argues that he is entitled to resentencing because the trial court erred in basing his sentence on factors that were unsupported by the evidence. We disagree.

This Court reviews the proper application of a statute de novo. *People v Krueger*, 466 Mich 50, 53; 643 NW2d 223 (2002). "If a minimum sentence is within the appropriate guidelines sentence range, the court of appeals shall affirm that sentence and shall not remand for resentencing absent an error in scoring the sentencing guidelines or inaccurate information relied upon in determining the defendant's sentence." *People v Kimble*, 470 Mich 305, 309; 684 NW2d 669 (2004), quoting MCL 769.34(10). A sentence imposed within an applicable judicial sentencing guidelines range is presumptively neither excessively severe nor unfairly disparate. *People v Broden*, 428 Mich 343, 354-355; 408 NW2d 789 (1987).

Defendant was found guilty of robbing a bank and then committing a carjacking in a nearby parking lot by threatening the vehicle's owner with a screwdriver. The court sentenced defendant to the maximum available within the sentencing guidelines, reasoning that defendant's record indicated eight other car heists, his crimes were escalating, and he appeared to be a career criminal. The court further noted, "I'm very concerned for the safety of society and, of course,

being a career criminal, Lord knows how many other cars have been taken that he's not been caught for...[b]ut I can safely assume there's been one or two others, if not 80 or 100 others." Defendant argues this comment constitutes an inappropriate and unconstitutional consideration that requires resentencing.

"A judge is entitled to rely on the information in the presentence report, which is presumed to be accurate unless the defendant effectively challenges the accuracy of the factual information." *People v Grant*, 455 Mich 221, 233-234; 565 NW2d 389 (1997) (footnotes omitted). A sentencing court is also allowed to consider the facts underlying uncharged offenses, pending charges, and acquittals. *People v Ewing (After Remand)*, 435 Mich 443, 446 (Brickley, J.), 473 (Boyle, J.); 458 NW2d 880 (1990). The presentence report indicated that defendant had five adult convictions or juvenile adjudications for Unlawfully Driving Away an Automobile (UDAA) and attempted UDAA. Three additional charges of UDAA and attempted UDAA were nullo prossed. The report also included the statement of defendant's roommate indicating that defendant "had stolen many vehicles in the past two weeks and believed it to be a total of eleven." Defendant admitted that he could not argue with the prior offenses in his record and did not challenge any information contained in the presentence report.

Although the court's statement appears to be blatant speculation because the presentence report did not indicate a number of car thefts anywhere near to eighty or one hundred, the exaggerated nature and content of the statement suggest that the court did not rely on this speculation when imposing sentence. Resentencing is not required if the trial court would have imposed the same sentence regardless of the error. *People v Mutchie*, 468 Mich 50, 51-52; 658 NW2d 154 (2003). The court specifically stated that it was relying on defendant's past eight convictions for car theft, the escalating nature of the offenses, and its belief that defendant is a career criminal when it decided to sentence defendant to the maximum available under the guidelines.

We conclude that the court's statement did not affect defendant's substantial rights. The court did not depart from the guidelines sentencing range. Lastly, defendant did not show that the alleged error seriously affected the fairness, integrity, or public reputation of the judicial proceeding.

Affirmed.

/s/ Michael J. Talbot  
/s/ William C. Whitbeck  
/s/ Kathleen Jansen