

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

RICHARD JEFFREY KINT,

Defendant-Appellant.

UNPUBLISHED
February 15, 2005

No. 251147
Jackson Circuit Court
LC No. 03-001724-FH

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

PER CURIAM.

Defendant appeals as of right his jury conviction for arson of a dwelling house, MCL 750.72 for which he was sentenced to five to twenty years' imprisonment. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant first argues that the court abused its discretion in denying his request for substitute counsel. An indigent defendant is guaranteed the right to counsel; however, he is not entitled to have the attorney of his choice. *People v Mack*, 190 Mich App 7, 14; 475 NW2d 830 (1991). Appointment of substitute counsel is warranted only on a showing of good cause where the substitution will not unreasonably disrupt the judicial process. *Id.* Good cause exists where there is a legitimate difference of opinion between a defendant and counsel with regard to a fundamental trial tactic. *Id.* The decision regarding substitution is committed to the discretion of the trial court. *Id.*

A defendant's mere allegation that he lacked confidence in his trial attorney is not good cause for substitute counsel. *People v Traylor*, 245 Mich 460, 463; 628 NW2d 120 (2001). Counsel's decisions regarding trial strategy are matters of professional judgment entrusted to an attorney and do not warrant appointing substitute counsel. *Id.*

Defendant failed to show good cause for the substitution of counsel. He identified a number of proposed witnesses and stated that counsel told him there was nothing he could do for him. Defendant did not identify the substance of the testimony that his proposed witnesses would offer or how trial counsel's performance was deficient. Several of the identified witnesses did testify at trial, and defendant did not renew his objections about counsel's representation. Defendant did not express a legitimate difference of opinion regarding a fundamental trial tactic, and his request for substitute counsel was properly denied.

Defendant argues that the trial court failed to identify a substantial and compelling reason for departing from the sentencing guidelines. The guidelines range was calculated at twenty-one to thirty-five months, and the court imposed a minimum sentence of sixty months, stating that defendant's act of revenge and the fact that he totally destroyed a house worth \$237,000 were substantial and compelling reasons for the departure.

A sentencing court may depart from the appropriate sentence range established under the sentencing guidelines if the court has a substantial and compelling reason for the departure, and states the reason on the record. MCL 769.34(3). The existence of a particular factor is a factual determination reviewed for clear error. *People v Babcock*, 469 Mich 247, 264; 666 NW2d 231 (2003). The determination that a factor is objective and verifiable is reviewed as a matter of law. *Id.* The determination that the objective and verifiable factors constitute substantial and compelling reasons to depart from the statutory minimum sentence is reviewed for abuse of discretion. *Id.*, 265.

While defendant's motive for his action is subjective, the value of the property destroyed is an objective and verifiable factor that supports a departure from the guidelines. The fact that defendant completely destroyed a \$237,000 house was a legitimate factor for the court to consider in determining the seriousness of his crime and the appropriate punishment. For this offense, the guidelines do not address the value of the property involved, and the court could reasonably conclude that the significant value of the destroyed property was a substantial and compelling reason to depart from the guidelines.

Defendant also argues that the court erroneously scored OV 4 at ten points for psychological injury to the victim, his ex-wife. The sentencing court has discretion in determining the number of points to be scored provided that there is evidence on the record that adequately supports a particular score. *People v Hornsby*, 251 Mich App 462, 468; 650 NW2d 700 (2002). This Court reviews the scoring to determine whether the sentencing court properly exercised its discretion and whether the evidence adequately supported a particular score. *People v McLaughlin*, 258 Mich App 635, 671; 672 NW2d 860 (2003).

Under OV 4, ten points may be scored if defendant caused serious psychological injury that may require professional treatment. In making this determination, the fact that treatment has not been sought is not conclusive. MCL 777.34(2). Given the symptoms reported by the victim, stress, forgetfulness, loss of memory and lack of sleep, and a major impact on her ability to function, there was factual support for the court's conclusion that the victim suffered serious psychological injury that may require professional treatment.

In a supplemental brief, defendant challenges the scoring of twenty-five points for OV 25 because that score was based on pending charges that had yet to be resolved. However, defendant failed to object to this score below, and the issue is not preserved for appeal. *People v Kimble*, 470 Mich 305, 312; 684 NW2d 669 (2004). Where defendant failed to raise the argument at trial, defendant must satisfy the plain error rule. *Id.* Defendant relies on *Blakely v Washington*, 542 US ___; 124 S Ct 2531; 159 L Ed 2d 403 (2004) as the basis for his argument. Where our Supreme Court has held that *Blakely* does not affect Michigan's system of sentencing

guidelines, *People v Claypool*, 470 Mich 715, 730-731 n 14; 684 NW2d 278 (2004), there is no showing of plain error.

Affirmed.

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