

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,  
  
Plaintiff-Appellee,

UNPUBLISHED  
December 13, 2012

v

JASON MICHAEL WOOD a/k/a JASON  
MICHAEL TORRES,

No. 303390  
Calhoun Circuit Court  
LC No. 2010-002650-FH

Defendant-Appellant.

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Before: O'CONNELL, P.J., and CAVANAGH and DONOFRIO, JJ.

PER CURIAM.

Defendant appeals as of right his jury conviction of first-degree home invasion, MCL 750.110a(2), for which he was sentenced, as a fourth habitual offender, to 7 to 25 years' imprisonment. See MCL 769.12. We affirm.

On August 9, 2010, defendant knocked on the victim's motel room door and, when the victim opened the door, defendant forced his way into the room. After accusing the victim of stealing his friend's tools and refusing to leave, defendant repeatedly punched the victim about the head and, when he finally left, he took the victim's cellular telephone and car keys. Although charged with first-degree home invasion and unarmed robbery, defendant was not convicted of unarmed robbery. During defendant's sentencing, the trial court asked the prosecutor and defense counsel: "Do either of you have any objections to the guidelines?" Defense counsel responded in the negative.

On appeal, defendant first argues that he was denied the effective assistance of counsel because his trial counsel failed to object to the improper scoring of OV 19; thus, he is entitled to resentencing. We disagree.

To establish ineffective assistance of counsel, a defendant must "show that his attorney's representation fell below an objective standard of reasonableness and that this was so prejudicial to him that he was denied a fair trial." *People v Toma*, 462 Mich 281, 302; 613 NW2d 694

(2000). In this case, our review is limited to errors apparent on the record because a *Ginther*<sup>1</sup> hearing was not held.

Offense variable 19 is properly scored at ten points where “[t]he offender otherwise interfered with or attempted to interfere with the administration of justice.” MCL 777.49(c). In scoring OV 19, a court may consider a defendant’s conduct after the completion of the sentencing offense. *People v Smith*, 488 Mich 193, 202; 793 NW2d 666 (2010). “[A]dministration of justice” is defined to extend to interference with law enforcement officers. *People v Barbee*, 470 Mich 283, 288; 681 NW2d 348 (2004). “A trial court determines the sentencing variables by reference to the record, using the standard of preponderance of the evidence.” *People v Osantowski*, 481 Mich 103, 111; 748 NW2d 799 (2008). A “sentencing court may consider all record evidence before it when calculating the guidelines, including, but not limited to, the contents of a presentence investigation report [PSIR], admissions made by a defendant during a plea proceeding, or testimony taken at a preliminary examination or trial.” *People v Althoff*, 280 Mich App 524, 541; 760 NW2d 764 (2008), quoting *People v Ratkov (After Remand)*, 201 Mich App 123, 125; 505 NW2d 886 (1993). A PSIR “is presumed to be accurate and may be relied on by the trial court unless effectively challenged by the defendant.” *People v Callon*, 256 Mich App 312, 334; 662 NW2d 501 (2003).

Defendant argues that “there was no evidence he either interfered with or even attempted to interfere with the administration of justice.” However, defendant’s PSIR indicated that defendant provided false information to a police officer during the officer’s investigation of this crime. In particular, when questioned by police, defendant insisted that he was in his motel room all night and had no idea what had happened.<sup>2</sup> Providing false information to a police officer investigating a crime interferes with the administration of justice for the purpose of scoring OV 19. *Barbee*, 470 Mich at 288. Accordingly, even if defense counsel had raised a challenge to the scoring of OV 19 at sentencing, the preponderance of the evidence supported the scoring of OV 19 at ten points. See *Osantowski*, 481 Mich at 111. “Defense counsel is not required to make a meritless motion or a futile objection.” *People v Goodin*, 257 Mich App 425, 433; 668 NW2d 392 (2003). Accordingly, defendant has not shown that defense counsel’s representation fell below an objective standard of reasonableness. See *Toma*, 462 Mich at 302.

Next, defendant argues that OV 12 was improperly scored at five points; thus, he is entitled to resentencing. We disagree.

Offense variable 12 is properly scored at five points where “[o]ne contemporaneous felonious criminal act involving a crime against a person was committed.” MCL 777.42(1)(d). Defendant was charged with, but acquitted of, unarmed robbery. However, “[a] trial court

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<sup>1</sup> *People v Ginther*, 390 Mich 436; 212 NW2d 922 (1973).

<sup>2</sup> In his supplemental brief, defendant suggests that OV 19 was scored at ten points because, at the jail, defendant threw his pants at a police officer and threatened the officer. However, under MCL 777.49(b) a score of 15 points, not ten points, is assigned for use of force or threats that results in the interference with the administration of justice.

determines the sentencing variables by reference to the record, using the standard of preponderance of the evidence.” *Osantowski*, 481 Mich at 111. In general, unarmed robbery is committed when an unarmed defendant feloniously takes the property of another by force or violence. *People v Harverson*, 291 Mich App 171, 177; 804 NW2d 757 (2010), citing MCL 750.530. Here, the victim testified that defendant forced his way into his hotel room, repeatedly punched him, and that his cellular telephone and car keys were missing after defendant’s forced entry.

But on appeal defendant does not actually dispute the merits of the trial court’s scoring of OV 12 at five points. Instead, defendant notes that the trial court did not address the scoring of OV 12 on the record and suggests that the trial court did not properly consider OV 12 in scoring the sentencing guidelines. Defendant argues that this case should be remanded because “the [trial court] was not given a fair opportunity to decide this issue.” However, at sentencing, the trial court asked the prosecutor and defense counsel: “Do either of you have any objections to the guidelines?” Defense counsel responded in the negative, thus waiving all challenges to the scoring of the guidelines. See *People v Carter*, 462 Mich 206, 215-216; 612 NW2d 144 (2000). In any case, the trial court explicitly relied on its scoring of the sentencing guidelines in sentencing defendant; thus, this claim is without merit. See *People v Conley*, 270 Mich App 301, 312-313; 715 NW2d 377 (2006).

Affirmed.

/s/ Peter D. O’Connell

/s/ Mark J. Cavanagh

/s/ Pat M. Donofrio