

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

FOR PUBLICATION
January 24, 2013
9:00 a.m.

v

BYRON DEANDRE JONES,

Defendant-Appellant.

No. 307184
Wayne Circuit Court
LC No. 11-001499-FC

Before: HOEKSTRA, P.J., and K. F. KELLY and BECKERING, JJ.

PER CURIAM.

A jury convicted defendant, Byron Deandre Jones, of three counts of assault with intent to do great bodily harm less than murder, MCL 750.84; carrying a concealed weapon (CCW), MCL 750.227; and possession of a firearm during the commission of a felony (felony-firearm), MCL 750.227b. The trial court sentenced defendant to 4 to 10 years' imprisonment for each of the assault convictions, one to five years for CCW, and two years for felony-firearm. Defendant appeals as of right. We affirm.

This case stems from a shooting in the Eastland Mall in Harper Woods, Michigan. Defendant and at least one other friend, identified at trial as "Taiwan," targeted another group of young men at the mall. Both defendant and Taiwan were armed and pulled guns during the confrontation with the other group. However, defendant was the only person to fire his gun.

Defendant's only claim on appeal is that the trial court erred by scoring offense variable (OV) 14, MCL 777.44, at 10 points on the basis of its conclusion that defendant was a leader in a "multiple offender situation." Defendant argues that the criminal transaction in this case was not a "multiple offender situation." Defendant insists that "there must be more than one person actively participating in the charged offense(s)" for there to be a "multiple offender situation" under OV 14 and that he was the only person who committed the assaults and the only person charged with the underlying offenses. We reject this argument.

We review de novo "[t]he interpretation and application of the legislative sentencing guidelines." *People v McGraw*, 484 Mich 120, 123; 771 NW2d 655 (2009). "We review the trial court's scoring of a sentencing guidelines variable for clear error." *People v Hicks*, 259 Mich App 518, 522; 675 NW2d 599 (2003). "A scoring decision is not clearly erroneous if the record contains 'any evidence in support of the decision.'" *Id.*, quoting *People v Witherspoon*, 257 Mich App 329, 335; 670 NW2d 434 (2003). "A sentencing court has discretion in

determining the number of points to be scored, provided that evidence of record adequately supports a particular score.” *People v Hornsby*, 251 Mich App 462, 468; 650 NW2d 700 (2002). “Scoring decisions for which there is any evidence in support will be upheld.” *Id.* (internal quotations omitted).

OV 14 addresses “the offender’s role” in a criminal transaction and should be scored at 10 points when “[t]he offender was a leader in a multiple offender situation.” MCL 777.44(1)(a). When scoring OV 14, the entire criminal transaction should be considered. MCL 777.44(2)(a); see also *McGraw*, 484 Mich at 125. Our task in interpreting the language of a statute is to determine and give effect to the Legislature’s intent. *People v Lowe*, 484 Mich 718, 721; 733 NW2d 1 (2009). “The statute’s words are the most reliable indicator of the Legislature’s intent and should be interpreted based on their ordinary meaning and the context within which they are used in the statute.” *Id.* at 721-722. MCL 777.44 does not define a “multiple offender situation.” Thus, we may consult dictionary definitions to ascertain its plain meaning. See *People v Stone*, 463 Mich 558, 563; 621 NW2d 702 (2001). The word “multiple” is defined as “consisting of more than one.” *New Illustrated Webster’s Dictionary of the English Language* (1992); see also *Random House Webster’s College Dictionary* (2001) (defining “multiple” as “consisting of, having, or involving several or many individuals, parts, elements, relations, etc.”). An “offense” is defined as a “transgression of the law,” and an “offender” indicates a person who violated the law. *Random House Webster’s College Dictionary* (1997). Moreover, the statute’s use of the word “leader” is significant when considering the context of the statute’s use of the phrase “multiple offender situation.” The word “leader” is not defined in the statute; however, the dictionary defines a “leader” as one who is a “guiding or directing head” of a group. *Id.* Therefore, the plain meaning of a “multiple offender situation” as used in OV 14 is a situation consisting of more than one person violating the law while part of a group.

In this case, no other defendants were put on trial for the shooting at the mall. And defendant was the only person charged in connection with the shooting. However, the trial court did hear testimony that at least one other man, identified at trial as “Taiwan,” accompanied defendant in the mall to confront the other group of young men. Moreover, trial testimony illustrated that the groups had a bad history with one another. The testimony further illustrated that the confrontation between the groups initially started out as “trash talk” and that the group opposing defendant and Taiwan believed that there would be a fist fight; however, defendant and Taiwan escalated the confrontation from “trash talk” when they both pulled out guns and defendant started firing. Several witnesses testified that they heard a loud disturbance, looked to see what was happening, and saw people panicking. Because there was evidence in this case of a “multiple offender situation,” i.e., a situation consisting of both defendant and Taiwan violating the law while being part of a group, we conclude that the trial court did not err by scoring OV 14 at 10 points.¹ See *Hornsby*, 251 Mich App at 468; MCL 750.170 (prohibiting a disturbance of the peace in a store or business place); MCL 750.234e (prohibiting the brandishing of a firearm

¹ We do not address whether defendant was a “leader” under OV 14 because defendant does not argue on appeal that he was not a “leader.”

in public); MCL 767.39 (providing that a person who aids or abets in the commission of an offense may be tried, convicted, and punished as if he or she directly committed such offense).

Affirmed.

/s/ Joel P. Hoekstra
/s/ Kirsten Frank Kelly
/s/ Jane M. Beckering