Order

Michigan Supreme Court
Lansing, Michigan

July 9, 2025

166566 & (37)

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff-Appellee,

v

SC: 166566
COA: 364906
Branch CC: 2021-113288-FH

CURTIS ALLEN MORRIS,
Defendant-Appellant.

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On April 23, 2025, the Court heard oral argument on the application for leave to appeal the December 14, 2023 judgment of the Court of Appeals. On order of the Court, the application and the motion to remand are again considered. MCR 7.305(I)(1). In lieu of granting leave to appeal, we VACATE the judgment of the Court of Appeals and REMAND this case to the Branch Circuit Court. On remand, the circuit court shall accept additional briefing from the parties, conduct a hearing if necessary, and issue an opinion setting forth its analysis of whether Offense Variable (OV) 19 was properly scored in light of this order. If the trial court determines that zero points should have been assigned for OV 19, it shall resentence defendant. *People v Francisco*, 474 Mich 82 (2006). If the trial court determines that 25 points should be assigned for OV 19 under MCL 777.49(a), it shall articulate how "the particular facts of the case" justify such an assignment. *People v Dixon*, 509 Mich 170, 181 (2022).

This appeal concerns whether the trial court at sentencing properly scored 25 points under OV 19 for "conduct threaten[ing] the security of a penal institution . . . ." MCL 777.49(a). While out on bond, defendant was arrested for absconding from parole and transported to the Branch County Jail. During the jail-intake process, an officer noticed a small baggie fall out of defendant's pants. The baggie contained a crystal-like substance, which weighed approximately 0.33 grams and tested positive for methamphetamine.[1]

[1] As a result, defendant was charged with furnishing contraband to prisoners in violation of MCL 801.263(1). But that charge was later dismissed under a global plea agreement in which defendant pleaded guilty to the earlier, unrelated possession-of-methamphetamine

In scoring OV 19 at 25 points, the trial court concluded that "[a]ny kind of dangerous drug brought into a facility [justifies OV 19 scoring], so based upon that there's a preponderance of the evidence that there is enough to score that . . . ." Scoring 25 points under OV 19 resulted in a sentencing guidelines minimum range of 19 to 38 months.[2] All told, the trial court sentenced defendant to 38 to 120 months' imprisonment. Defendant then appealed his sentence, and the Court of Appeals affirmed. *People v Morris*, unpublished per curiam opinion of the Court of Appeals, issued December 14, 2023 (Docket No. 364906). This appeal followed, and we ordered oral argument on the application, directing the parties to address "whether the Branch Circuit Court properly assigned 25 points to Offense Variable 19, MCL 777.49(a)." *People v Morris*, ___ Mich ___; 10 NW3d 669 (2024). For the reasons set forth in this order, we conclude that the trial court failed to adequately explain its decision to assign 25 points under OV 19 and, therefore, we vacate the Court of Appeals' judgment affirming as much.

At their core, OVs seek "to tailor a recommended sentence to a particular case." *Dixon*, 509 Mich at 177.[3] They do so by generating a sentencing range "meant to reflect the particular facts of the case" based on factors that the Legislature has deemed relevant to sentencing. *Id*. at 181. At play here is OV 19, appropriately scored at 25 points when "the defendant 'by his or her conduct threatened the security of a penal institution . . . .' " *Id*. at 177, quoting MCL 777.49(a).[4] "To satisfy this standard, a court must find (1) that

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charge in this case, MCL 333.7403(2)(b)(*i*), in exchange for dismissal of various other charges.

[2] Defendant objected to the scoring of OV 19 at 25 points, arguing that OV 19 should have been scored at zero points. Had defendant's objection been sustained, his guidelines minimum range would have been 5 to 23 months.

[3] We review a trial court's factual determinations at sentencing for clear error, ensuring that such determinations are supported by a preponderance of the evidence. *People v Hardy*, 494 Mich 430, 438 (2013). But whether "the facts, as found, are adequate to satisfy the scoring conditions prescribed by statute, i.e., the application of the facts to the law, is a question of statutory interpretation" that we review de novo. *Id*.

[4] At odds with defendant's argument that the jail incident comprised separate, post-offense conduct that should not have been considered at sentencing, we have held that "OV 19 may be scored for conduct that occurred after the sentencing offense was completed." *People v Smith*, 488 Mich 193, 202 (2010). In fact, the "aggravating factors considered in OV 19 contemplate events that almost always occur *after* the charged offense has been completed." *Id*. at 200. Accordingly, the underlying sentencing offense itself—here, an earlier possession-of-methamphetamine offense—need not threaten the security of the

the defendant engaged in some conduct and (2) that conduct threatened the security of the" penal institution. *Id*.

We have instructed that context is critical to this analysis so that OV 19 does not become "boundless" in practice. *Id*. at 181; see also *People v Deweerd*, 511 Mich 979, 981 (2023) (reaffirming *Dixon*'s admonition). Consequently, we held in *Dixon* that the trial court improperly assessed 25 points under OV 19 for mere possession of a cell phone in a prison bathroom because the "context" provided no facts establishing that "the defendant's conduct, in fact, threatened the security of the institution." *Dixon*, 509 Mich at 177, 181-182. That is, although "cell phones can be used in threatening ways," the trial court "found no facts beyond the constructive possession" to support a conclusion that the institution's security was threatened. *Id*. at 181. Mere possession—without more—was thus a "hypothetical threat" insufficient to warrant the assessment of 25 points under OV 19. *Id*. at 182.

Here, in determining that the assessment of 25 points under OV 19 was warranted, the trial court applied *People v Dickinson*, 321 Mich App 1, 23-24 (2017). In *Dickinson*, the defendant visited a prisoner at a correctional facility and was observed handing a brown paper towel to the prisoner. *Id*. at 5. An officer intervened and retrieved 5.68 grams of heroin from the prisoner's hand. *Id*. at 5, 7. The Court of Appeals determined that it was appropriate to assign 25 points under OV 19 because smuggling heroin into a prison and delivering it "into the confines of the prison threatened the safety and security of both the guards and the prisoners." *Id*. at 23-24. Moreover, the panel noted that the Legislature "specifically criminalized such conduct because of the seriousness of the problem of drugs in our state's penal institutions." *Id*. at 23.

In reviewing the trial court's assessment, the Court of Appeals panel in the present case also found *People v Carpenter*, 322 Mich App 523 (2018), supportive. In *Carpenter*, the defendant tried to smuggle controlled substances into jail and then struck and injured another inmate who he believed had reported him. *Id*. at 526-527. The *Carpenter* court held that the trial court properly assessed 25 points under OV 19, reasoning that "[t]he smuggling of controlled substances into a jail" poses a threat "because of the dangers of controlled substances to the users and those around them." *Id*. at 531. And the defendant's retaliatory assault further threatened the penal institution because it could discourage other inmates "from coming forward about security breaches they might witness." *Id*.

We find neither *Dickinson* nor *Carpenter* to be all that illuminating on the record before us. True, at a high level of generality, both those cases and the present one involve controlled substances somewhere within a penal institution. But there the resemblance

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penal institution for a trial court to properly assess 25 points under OV 19. See *id*. at 200-201.

stops. Unlike this case, neither of those cases involved mere possession of a controlled substance on an arrestee's person during jail intake; rather, both cases hinged on far more culpable conduct beyond intake and "beyond the drug possession—drug smuggling and assault—to justify a 25-point score." *Dixon*, 509 Mich at 179. Nor did *Dickinson* or *Carpenter* involve the more controlled jail-intake process, which exists in large part to identify the very contraband at issue and prevent its transportation to more vulnerable areas of the penal institution. Accordingly, *Dickinson* and *Carpenter* are inapt on the instant facts.

Despite these important distinctions, the trial court did not find any facts "beyond the drug possession" as to how defendant's particular conduct threatened the security of the jail. The trial court instead relied on *Dickinson* for the categorical proposition that "any introduction of a controlled substance into the facility" justifies assigning 25 points under OV 19. Although we readily recognize that controlled substances may be threatening in many penal contexts, there must be some daylight between surreptitiously delivering 5.68 grams of heroin to a prisoner, *Dickinson*, 321 Mich App at 6, 23-24, or drug smuggling in jail and engaging in a retaliatory attack, *Carpenter*, 322 Mich App at 531, and merely possessing 0.33 grams of a controlled substance during intake after being arrested, handcuffed, and brought to jail. Adopting the reasoning of the trial court and Court of Appeals in this case would morph OV 19 into the "boundless" OV that we rejected in *Dixon*, giving the go-ahead to a 25-point assessment whenever an arrestee incidentally possesses a controlled substance—even, say, pain medication or medical marihuana—at the time of arrest and intake. See *Dixon*, 509 Mich at 181. Because nothing in the plain text of MCL 777.49(a) supports such a categorical rule, we decline to craft one today.

On the other side of the coin, we also decline to categorically foreclose an assessment of 25 points under OV 19 for intake-related drug possession.[5] Some drug possession at intake may threaten a penal institution's security; some may not. The fact-specific nature of OV scoring simply eschews a one-size-fits-all approach and instead requires a finding that each of the statutory elements specifically have been met.

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[5] In so doing, we reject defendant's argument that a jail's intake area is *not* part of a "penal institution" for purposes of MCL 777.49(a). To the contrary, a jail is plainly a "penal institution," and Michigan law broadly defines "jail." See, e.g., MCL 801.251(4), MCL 141.472(c), and MCL 791.262(c). We therefore discern no legislative intent to carve out an intake area from the "penal institution" contemplated by MCL 777.49(a). In any event, this inside-or-outside distinction is largely a red herring because "OV 19 specifies that a defendant's conduct must threaten a penal institution's security, not that the conduct must take place within a penal institution." *People v Durr*, unpublished per curiam opinion of the Court of Appeals, issued November 13, 2024 (Docket No. 368842), p 3. So while the location of the conduct certainly remains relevant to the OV 19 inquiry, it may not always be outcome-determinative.

Consequently, a trial court must find specific facts showing how the defendant's possession of a controlled substance during intake actually "threatened the security of a penal institution" before assessing 25 points under OV 19. MCL 777.49(a).[6] Trial courts "will—as they already do with many other OVs—make case-by-case determinations on that basis." *Deweerd*, 511 Mich at 981 n 4.

In short, context matters when assessing points under OV 19. See *Dixon*, 509 Mich at 181. Yet here, important context was overlooked. Because the trial court failed to make any specific findings regarding how defendant's conduct actually threatened the security of the Branch County Jail, we vacate the judgment of the Court of Appeals and remand this case to the trial court for reconsideration of whether OV 19 was properly scored.

We do not retain jurisdiction.

BERNSTEIN, J. (*dissenting*).

This Court holds that the trial court erred by assigning 25 points to Offense Variable (OV) 19 where a small amount of a controlled substance fell out of defendant's pants as he was being processed for intake at the county jail. I agree with the majority that neither *People v Dickinson*, 321 Mich App 1 (2017), nor *People v Carpenter*, 322 Mich App 523 (2018), is entirely on point, given that both cases involve additional, and more serious, conduct on the part of the respective defendants. I also agree with the majority that a jail's intake area is part of a "penal institution" for purposes of MCL 777.49(a). However, I disagree with the Court's ultimate conclusion about the scoring of OV 19.

The trial court assigned 25 points under OV 19, which is appropriate where "[t]he offender by his or her conduct threatened the security of a penal institution or court[.]" MCL 777.49(a). The Court holds that the trial court did not adequately explain how

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[6] The greater statutory context of OV scoring only confirms our conclusion. On one hand, our Legislature has similarly ordered that 25 points be assessed for, among other serious acts, supporting terrorism, MCL 777.49a(1)(c); leaving a victim with a life-threatening or permanently incapacitating injury, MCL 777.33(1)(c); shooting at or stabbing a victim, MCL 777.31(1)(a); placing 10 or more victims in danger of physical injury or death, MCL 777.39(1)(b); and committing a criminal sexual penetration, MCL 777.41(1)(b). On the other hand, our Legislature has ordered just 15 OV points for acts such as using force to interfere with the administration of justice, MCL 777.49(b), and exploiting a vulnerable victim through predatory conduct, MCL 777.40(1)(a). Even showing "a wanton or reckless disregard for the life or property of another person" is scored at 10 points. MCL 777.47(1)(a). Juxtaposing these other OVs with the record before us reinforces a legislative intent to require more careful consideration of whether OV 19 applies to mere possession of a controlled substance during intake.

defendant's conduct threatened the security of the penal institution, noting that "merely" 0.33 grams of a controlled substance was at issue here and that a contrary holding would lead to a boundless scoring of OV 19 in all instances, even where the involved substance is relatively innocuous, like "pain medication or medical marihuana." Despite noting that "context matters" and acknowledging that "[s]ome drug possession at intake may threaten a penal institution's security," the Court fails to highlight important context in this case: the fact that the controlled substance at issue here was methamphetamine, which is categorically different from pain medication or medical marihuana.

In *People v Dixon*, 509 Mich 170 (2022), this Court held that whether possession of an item is conduct that threatens the security of a penal institution depends on the item possessed, and it contrasted the nature of a cell phone against that of a gun: "[U]nlike possession of a weapon, the nature of the cell phone possession is important to determining whether it 'threatened the security of a penal institution' because cell phones have many nonthreatening uses." *Dixon*, 509 Mich at 180. Despite relying on *Dixon*, the Court does not explain how methamphetamine is more like a cell phone than a gun, and I question how many nonthreatening uses methamphetamine has. This is concerning especially where the Court appears to rely solely on *Dixon* to justify its holding—although the Court notes that "nothing in the plain text of MCL 777.49(a) supports such a categorical rule," the Court does not engage in any independent analysis of the statute's plain text. Instead, the Court decides this case on the basis of hypothetical facts.

Because I believe the lower courts did not err in their application of OV 19, I would have denied leave.[7] Accordingly, I dissent.

ZAHRA, J., joins the statement of BERNSTEIN, J.,

HOOD, J., did not participate because he was on the Court of Appeals panel.

[7] The breadth of the Court's remand instructions is also noteworthy. The Court seeks to micromanage the trial court by directing it to accept additional briefing, conduct a hearing, if necessary, issue an opinion, and then resentence defendant if it determines that zero points should have been assigned for OV 19. It would be more appropriate to simply remand for further proceedings, to allow the trial court to attempt to apply the Court's muddled holdings in whatever fashion it sees fit.

STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

CURTIS ALLEN MORRIS,

Defendant-Appellant.

UNPUBLISHED
December 14, 2023

No. 364906
Branch Circuit Court
LC No. 2021-113288-FH

Before: FEENEY, P.J., and RICK and HOOD, JJ.

PER CURIAM.

Defendant appeals by leave granted[1] the sentence imposed after he pleaded guilty to knowingly or intentionally possessing methamphetamine, MCL 333.7403(2)(b)(*i*). The trial court sentenced defendant to serve 38 months to 12 years in prison. We affirm.

I. FACTUAL BACKGROUND

This case arose from an incident when a small bag containing 0.33 grams of methamphetamines fell from defendant's pocket onto the floor of the Branch County Jail's booking area. Defendant had just been arrested for absconding from parole and was out on bond for two additional offenses. The trial court subsequently sentenced defendant as previously noted, and defendant objected to the court's scoring of OV 19 in both this case and a companion case involving resisting and obstructing a police officer. Defendant argued that the court had wrongly concluded that he was in the jail when the drugs fell out of his pocket. He also argued that the trial court could not have assessed 25 points under OV 19 using conduct that formed the basis of a crime that the prosecutor dropped as part of a plea deal. Lastly, he claimed that the court's OV 19 score was incorrect, given that he informed the officers when the methamphetamines fell out of his pocket.

[1] *People v Morris*, unpublished order of the Court of Appeals, entered March 20, 2023 (Docket No. 364906).

The trial court disagreed, finding that defendant's actions constituted a serious danger to a penal institution. At sentencing, the court heard the statement of a probation agent who asserted that the assessment of the 25 points rested on the fact that defendant was on bond at the time for two prior offenses. Although the underlying charge had been dropped per the plea agreement, defendant's conduct nevertheless constituted conduct that occurred after the sentencing offense. Moreover, the court considered the inherently dangerous nature posed by the methamphetamines. Therefore, the court found that OV 19 was properly scored. This appeal followed.

II. ANALYSIS

Defendant's only claim of error on appeal is that the trial court improperly assigned 25 points under OV 19, thus extending his maximum sentence. Defendant bases his appeal on the claim that his conduct did not threaten the security of the jail as he was not actually in the jail when the offense occurred. Defendant also argues that the trial court wrongly considered postoffense conduct when assigning 25 points for OV 19, pointing out that he warned the officers of the drugs' presence when they fell out of his pocket. We disagree.

This Court reviews de novo whether the trial court properly interpreted and applied the relevant law to the facts. *People v Clark*, 330 Mich App 392, 415; 948 NW2d 604 (2019). This Court reviews for clear error the trial court's factual findings in support of a particular score under an offense variable. See *People v Dickinson*, 321 Mich App 1, 20-21; 909 NW2d 24 (2017). A finding is clearly erroneous when this Court is left with the definite and firm conviction that a trial court made a mistake. *Id*. at 21.

Michigan law states that "a person shall not sell, give, or furnish, either directly or indirectly, any alcoholic liquor, prescription drug, poison, or controlled substance to a prisoner who is in or on a correctional facility . . . ." MCL 800.281(1). The law further forbids any disposing "of that liquor, drug, poison, or controlled substance in any manner that allows a prisoner or employee of the correctional facility who is in or on a correctional facility access to it." MCL 800.281(1). Additionally, this Court has unequivocally acknowledged that any "smuggling of controlled substances into a jail" poses "a threat to the security of a penal institution" given the "dangers of controlled substances to the users and those around them." *People v Carpenter*, 322 Mich App 523, 531; 912 NW2d 579 (2018). Additionally, the Michigan Supreme Court has stated that "[a] 25-point score under OV 19 requires the trial court to find by a preponderance of the evidence that the defendant by his or her conduct threatened the security of a penal institution or court." *People v Dixon*, 509 Mich 170, 177; 983 NW2d 385 (2022) (quotation marks and citation omitted); see also MCL 777.49(a). Satisfying this standard requires the trial court to find "(1) that the defendant engaged in some conduct and (2) that conduct threatened the security of the prison." *Dixon*, 509 Mich at 177.

Defendant contends that his conduct, which occurred in the booking area of the jail, could not have threatened the jail's security as the booking area technically lies outside the jail's facilities. However, MCL 801.251(4) broadly defines a "jail" as a facility "operated by a county for the detention of persons charged with . . . criminal offenses . . . ." Michigan's Health and Safety Fund Act, MCL 141.471 *et seq*., similarly defines a "[j]ail facility," as "a jail, holding cell, holding center, or lockup as those terms are defined in [MCL 791.262]." MCL 141.472. MCL 791.262(a) defines "[h]olding cell" as a "cell or room in a facility of a local unit of

government that is used for the detention of . . . persons awaiting processing, booking, [or] court appearances . . . ." Additionally, Subdivision (b) defines "[h]olding center" as a "facility . . . operated by a local unit of government for the detention of persons awaiting processing, booking, [or] court appearances . . . ." Taken together, these provisions of Michigan law establish that the booking phase of detention remains a significant part of the overall detention process. As the facilities used for booking constitute an important component of the detention facility, defendant was legally in the jail when the methamphetamines fell out of his pocket. Thus, defendant's argument on this point lacks merit.

Defendant's argument that OV 19 does not contemplate postoffense conduct is equally unavailing. Contrary to his claim, this Court has recognized that OV 19 "explicitly contemplates postoffense conduct." *Carpenter*, 322 Mich App at 530. Additionally, the sentencing offense need not involve a threat to a penal institution's security. *Id*. When a defendant is in custody at the time a "controlled-substance" offense occurs in a penal institution, that defendant is in the "administration of justice phase of the sentencing." *Id*. (quotation marks omitted). Thus, defendant was in the "administration of justice" phase when the methamphetamines fell from his pocket. See *id*. Additionally, when the offense took place, defendant was being placed in jail for a separate, underlying offense, namely parole absconding. That the underlying charge did not involve a threat to the jail and that it was eventually dropped per a plea bargain is irrelevant. Because the assignment of OV 19 points contemplates postoffense conduct, the trial court acted properly in assessing defendant's conduct while in police custody.

Finally, defendant's contention that his conduct did not constitute a threat to the jail's security also lacks merit, notwithstanding defendant's warning to officers about the drugs. The Michigan Supreme Court has recognized that "possession alone" of controlled substances, "even constructive possession," could threaten the security of a penal institution. *Dixon*, 509 Mich at 179. Defendant's possession of methamphetamines while in the jail posed a risk to the jail's security. Because defendant was in an area considered part of the jail, he possessed the drugs while in the jail and its facilities. Given the danger posed by the drugs and defendant's possession of them while in the jail, we may, but need not, inquire into defendant's handling of the substances to justify the trial court's assignment of 25 points under OV 19. See *id*. at 180-182. Regardless, defendant's conduct suggests, though does not confirm, the possibility of drug smuggling.

As for defendant warning the officers of the drugs' presence, this claim remains somewhat suspect as this assertion admittedly originated from defendant, not the officers. Also, it remains unclear whether defendant's decision to inform the officers was based on a desire to follow the law or to simply lessen the consequences of being discovered with drugs after his arrest. More importantly, this act fails to nullify the fact that defendant brought the drugs into the jail's booking area, thus within the reach of its facilities, inmates, and employees. The law clearly forbids the disposing of a controlled substance "in any manner" that enables a "prisoner or employee" of a jail to access it. MCL 800.281(1). By bringing the drugs within reach of the officers and having the drugs in his possession while in the jail, defendant posed a security risk to the jail that could have been very serious if he had managed to get past the booking area without their presence being detected. On this record, defendant has not shown that the trial court plainly erred when it assessed 25 points under OV 19. See *Dickinson*, 321 Mich App at 21.

Affirmed.

/s/ Kathleen A. Feeney
/s/ Michelle M. Rick
/s/ Noah P. Hood