

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

MALIK CHRISHARD LEWIS,

Defendant-Appellant.

UNPUBLISHED

September 11, 2026

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No. 375473

St. Clair Circuit Court

LC No. 24-000076-FC

Before: BAZZI, P.J., and PATEL and ACKERMAN, JJ.

PER CURIAM.

Defendant appeals by leave granted¹ his plea-based convictions for second-offense domestic violence, MCL 750.81(2), assaulting, resisting, or obstructing a police officer causing serious impairment (APO-CSI), MCL 750.81d(3), and common-law obstruction of justice, MCL 750.505. The trial court sentenced defendant, as a second-offense habitual offender, MCL 769.10, to 48 to 270 months’ imprisonment for APO-CSI and to time served for the other offenses. On appeal, defendant contends that the trial court erred by assessing 10 points for Offense Variable (OV) 12. We agree and therefore vacate defendant’s sentence for the APO-CSI conviction and remand for resentencing and correction of the sentencing information reports.

I. BACKGROUND

This case arises out of a domestic dispute between defendant and his then-girlfriend at Desmond Landing, a parking lot that abuts the St. Clair River. A bystander called 911 at the victim’s request, and Port Huron Police Department Officers Caleb Paul, William Hoppe, and Christian Matich responded to the call.

When the officers arrived, defendant ran southbound toward the river. As Officer Paul pursued defendant on foot, defendant began to wade into the water. The officer attempted to place

¹ *People v Lewis*, unpublished order of the Court of Appeals, entered June 25, 2025 (Docket No. 375473).

defendant under arrest by grabbing his wrist, and the two grappled before falling into the water, with Officer Paul landing on his back. According to Officer Paul's preliminary-examination testimony, defendant then placed his hands on the officer's chest and pushed the officer underwater for approximately eight seconds before standing up and continuing to run southbound. Officer Paul then joined Officers Hoppe and Matich in a foot pursuit, and defendant ran approximately 100 yards before Officer Hoppe pulled him to the ground by the hood of his sweatshirt. Defendant continued to resist the officers' attempts to handcuff him by holding his arms beneath his body before the officers ultimately placed him under arrest.

Defendant was charged with third-offense domestic violence; assault with intent to murder (AWIM), MCL 750.83, as to Officer Paul; and three counts of assaulting, resisting, or obstructing a police officer (R&O), MCL 750.81d(1), one count for each officer. He subsequently pleaded no contest to added counts of second-offense domestic violence, APO-CSI as to Officer Paul, and common-law obstruction of justice; in exchange, the prosecution dismissed the other charges. At the plea hearing, the prosecutor stated for the record her "good faith" scoring of certain offense variables, including an assessment of 10 points for OV 12 "for the two counts of R&O being dismissed," though she acknowledged that the court was not bound by that scoring. Defense counsel declined to stipulate to the scoring of any specific guideline and indicated that she would address the guidelines at sentencing. The trial court stated that it would not make any commitment as to the appropriate guidelines range at the plea hearing and would determine the guidelines at sentencing.

The trial court reviewed the preliminary-examination transcript to establish a factual basis for the plea. Regarding the domestic violence charge, the court found that defendant assaulted his then-girlfriend, causing redness to her neck. Turning to the offenses arising from the officers' pursuit, the court found in relevant part:

[A]s a result of a physical altercation that occurred between [defendant] and [Officer Paul], Officer Paul was underwater for a period of time. And he believed that that was at the hands, intentionally at the hands of [defendant] and that he was unable to get up, and he felt that he was drowning and he was in fear for his life

Based upon everything that we have talked about so far in this case, what I have reviewed, the rulings that I have made, I also believe that there are sufficient facts on this record to support a finding of guilt as to . . . resisting and . . . obstructing a police officer causing serious impairment.

After that, [defendant] was approached by Officer Hoppe from the Port Huron Police Department and ordered to basically stop and surrender himself He chose not to do that based upon the record, and he chose to continue fleeing and resisting and obstructing the efforts of Officer Hoppe and the other officers that were on the scene. And he just didn't want to be caught and brought to justice for the things that had occurred that the Court has now found there is sufficient support for on the record to find [defendant] guilty of these three added offenses.

A presentence investigation report (PSIR) was then prepared. The sentencing information reports for the APO-CSI and obstruction convictions assessed zero points for OV 12. At

sentencing, the prosecutor objected to that assessment, contending that OV 12 should be assessed 10 points based on defendant's "acts of assaulting Officer Matich and Officer Hoppe." Defendant requested that the court assess zero points, asserting that the obstruction conviction subsumed all three counts of R&O and that those acts were therefore not scorable under OV 12. The prosecutor responded that, when she extended the plea offer, she understood that the added count of obstruction would subsume only one of the R&O counts and that the other two would be scored.

After considering the parties' arguments, the trial court stated that it was "not comfortable . . . after listening to what [the prosecutor] did in terms of posturing the agreement and presenting the agreement . . . that [the obstruction conviction] did consume or subsume all of the R&Os." The court therefore assessed 10 points for OV 12. Defendant was sentenced as described above, and he now appeals.

II. DISCUSSION

Defendant argues that the trial court erred by assessing 10 points for OV 12 because the two dismissed R&O counts were subsumed into his obstruction conviction and therefore do not constitute separate contemporaneous felonious criminal acts. We agree.

"Under the sentencing guidelines, the circuit court's factual determinations . . . must be supported by a preponderance of the evidence." *People v Teike*, 348 Mich App 520, 526; 19 NW3d 733 (2023) (citation omitted; alteration in original). We review the trial court's factual findings underlying its assessment of offense variables for clear error and review de novo "whether the trial court properly interpreted and applied the sentencing guidelines to the findings." *Id.* at 525 (citation omitted). "Clear error exists when this Court is left with a definite and firm conviction that a mistake was made." *Id.* at 526 (quotation marks and citation omitted).

OV 12 addresses contemporaneous felonious criminal acts and is governed by MCL 777.42. As relevant here, OV 12 should be assessed 10 points when "[t]wo contemporaneous felonious criminal acts involving crimes against a person were committed," five points when "[o]ne contemporaneous felonious criminal act involving a crime against a person was committed," and zero points if "[n]o contemporaneous felonious criminal acts were committed." MCL 777.42(1)(b), (d), and (g).

A felonious criminal act is contemporaneous when it "occurred within 24 hours of the sentencing offense" and "has not and will not result in a separate conviction." MCL 777.42(2)(a)(1)-(2). "[T]he language of OV 12 clearly indicates that the Legislature intended for contemporaneous felonious criminal acts to be acts other than the sentencing offense and not just other methods of classifying the sentencing offense." *People v Light*, 290 Mich App 717, 726; 803 NW2d 720 (2010). Accordingly, "only the number of underlying criminal *acts* is to be considered when scoring OV 12, not the number of *crimes* that may be charged from those acts." *People v Stoner*, 339 Mich App 429, 436; 984 NW2d 775 (2021).

This Court's decision in *Teike* is instructive. There, the defendant caused a three-vehicle collision while intoxicated and was charged with operating a vehicle while intoxicated causing serious impairment (Count One), operating a vehicle with a suspended license causing serious impairment (Count Two), third-offense operating a vehicle with a suspended license causing

serious impairment (Count Three), and reckless driving causing serious impairment (Count Four). *Teike*, 348 Mich App at 524-525. The defendant pleaded no contest to Count Four in exchange for the dismissal of the other charges, and the trial court later assessed 10 points for OV 12 based on dismissed Counts One and Two. *Id.* at 525, 531.

Because the trial court relied on the affidavit of probable cause to establish the factual basis for the plea, this Court looked to that affidavit to determine whether the conduct underlying Counts One and Two had been used to establish an element of the sentencing offense. The affidavit “asserted that defendant had acted with a willful and wanton disregard for the safety of others by operating his vehicle under the influence of Suboxone.” *Id.* at 532-533. Concluding that “defendant’s conduct in operating his vehicle while intoxicated was used to establish an element of the sentencing offense,” this Court held that the conduct “cannot be used to establish separate felonious acts for the purposes of scoring OV 12.” *Id.* at 533. The Court explained that “a determination of whether an offender has engaged in multiple ‘acts’ for purposes of OV 12 does not depend on whether he or she could have been charged with other offenses for the same conduct.” *Id.* at 523 (citation omitted). Instead, “[w]hat matters under OV 12 is whether the acts alleged to be contemporaneous felonious acts can be separated from the sentencing offense—in other words, whether they were used to establish elements of the sentencing offense.” *Id.*

In this case, defendant pleaded no contest to, among other things, common-law obstruction of justice, which “is generally understood as an interference with the orderly administration of justice.” *People v Milstead*, 250 Mich App 391, 405; 648 NW2d 648 (2002). “Obstruction of justice, however, is not a single offense, but a category of crimes that interfere with the public administration of justice.” *People v Jenkins*, 244 Mich App 1, 15; 624 NW2d 457 (2000) (citation omitted). “Thus, in order to sustain a charge of common-law obstruction of justice, common-law precedence for the specific offense charged as obstruction of justice must exist.” *Id.*

The record does not identify the common-law precedent under which the prosecutor added the obstruction count or what criminal act or acts gave rise to that charge. An amended felony information filed after the plea hearing indicates only that defendant was charged with “commit[ting] the crime of obstruction of justice; contrary to MCL 750.505,” and no further information regarding that offense is provided. We therefore look to the factual basis established by the trial court to determine what criminal acts were contemplated by the obstruction conviction.

In setting forth the factual basis for the obstruction plea, the trial court found that defendant “chose to continue fleeing and resisting and obstructing the efforts of Officer Hoppe and the other officers that were on the scene.” Defendant’s acts of resisting or obstructing Officers Hoppe and Matich were thus used to establish the obstruction conviction. Those acts do not constitute separate felonious criminal acts relative to the obstruction conviction because they cannot be separated from the acts that were used to establish that charge. See *Teike*, 348 Mich App at 533. And because those acts resulted in a separate conviction, they likewise do not constitute separate felonious criminal acts relative to the APO-CSI conviction. The trial court therefore erred in assessing 10 points for OV 12 based on those acts.

The prosecution’s contrary argument—that the letter extending the plea offer and the discussion of OV 12 at the plea hearing demonstrate that the obstruction conviction was intended to subsume only the R&O count as to Officer Paul—is unpersuasive. The plea letter is not

contained in the lower court record and has not been presented to this Court. The discussion at the plea hearing, moreover, makes clear that the parties did not stipulate to any specific scoring as a condition of the plea, and both the prosecutor and the trial court acknowledged that the court was not bound by the prosecutor's "good faith" scoring of the offense variables.

More fundamentally, the parties' intentions in formulating a plea are not record evidence of criminal acts. OV 12 turns on "the number of underlying criminal acts . . . , not the number of crimes that may be charged from those acts." *Stoner*, 339 Mich App at 436. That separate counts of R&O were charged or referenced in a plea letter does not establish that two acts—separate from the sentencing offense and unconnected to any conviction—actually occurred. Indeed, the trial court acknowledged at sentencing that if the obstruction conviction reflected the conduct underlying the R&O charges, it would subsume all of the R&O counts, not merely one. That observation is consistent with the factual basis established at the plea hearing, where all of the officer-directed conduct beyond the altercation with Officer Paul was used to establish the obstruction offense.

Because defendant's acts of resisting Officers Hoppe and Matich were used to establish the separate obstruction conviction, the record does not support a finding of two contemporaneous felonious criminal acts against a person for purposes of scoring OV 12. The assessment of 10 points for that variable was therefore erroneous. Correcting that error reduces defendant's total OV level from IV to III relative to the APO-CSI conviction and alters the corresponding guidelines range, entitling defendant to resentencing on that conviction. See *People v Francisco*, 474 Mich 82, 90; 711 NW2d 44 (2006). The correction does not alter the guidelines range for the obstruction conviction, however, so defendant is not entitled to resentencing on that offense. See *Teike*, 348 Mich App at 537.

Defendant is nonetheless entitled to accurate guidelines and an accurate PSIR because he has a right to be sentenced on, and to have the Department of Corrections receive, accurate information. *People v Maben*, 313 Mich App 545, 553; 884 NW2d 314 (2015). Accordingly, the trial court shall correct the sentencing information reports for both the APO-CSI and obstruction convictions on remand.

III. CONCLUSION

We affirm defendant's sentence for obstruction. We vacate his sentence for APO-CSI and remand for resentencing and correction of the sentencing information reports for both convictions. We do not retain jurisdiction.

/s/ Mariam S. Bazzi

/s/ Sima G. Patel

/s/ Matthew S. Ackerman