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STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED October 27, 2026 12:24 PM
v	No. 377597 Berrien Circuit Court
ALONZO DOMINIC DAVIS, Defendant-Appellant.	LC No. 2024-046676-FC

Before: SWARTZLE, P.J., and ACKERMAN and TREBILCOCK, JJ.

PER CURIAM.

A jury convicted defendant, Alonzo Dominic Davis, of being a felon in possession of a firearm and carrying a firearm during the commission of a felony. Defendant does not dispute his convictions. Rather his appeal narrowly challenges his felon-in-possession sentence, arguing that the trial court relied on acquitted conduct and imposed a disproportionate and unreasonable top-of-the-guidelines sentence. We affirm defendant's sentence but remand for the ministerial task of correcting defendant's presentence investigation report in a manner consistent with this opinion.

I. FACTUAL AND PROCEDURAL BACKGROUND

On an afternoon in November 2024, defendant spotted Deontae Murphy—defendant's former supervisor with whom he had a prior work dispute—in a gas station parking lot which adjoined the Culver's drive-thru lane where defendant was waiting for his food. Defendant left the Culver's, pulled his vehicle near Murphy's truck, exited his vehicle, quickly approached Murphy, and started verbally accosting him. Murphy had a gun at the time; defendant did not.

The verbal exchange rapidly escalated into a physical altercation that spilled into the front cab of Murphy's truck. In defendant's own words, he eventually "snatched" Murphy's gun and "pointed [it] at his head." The gun discharged during the ensuing struggle, and the bullet grazed Murphy's thumb and shoulder. Murphy escaped, ran into the gas station, and locked the door behind him. Defendant, gun in hand, unsuccessfully tried to follow Murphy inside. Unable to gain entry, defendant placed the gun in a bystander's vehicle and waited for police to arrive.

For these acts, the prosecution charged defendant with one count of assault with intent to murder (AWIM), MCL 750.83; one count of unarmed robbery, MCL 750.530; one count of being a felon in possession of a firearm (felon-in-possession), MCL 750.224f; and two counts of carrying a firearm during the commission of a felony (felony-firearm), MCL 750.227b. The jury found defendant guilty of felon-in-possession and one count of felony-firearm (predicated on his being a felon-in-possession) but acquitted him of the remaining charges.

At sentencing, the trial court granted defendant's requests to make various changes to his presentence investigation report (PSIR), including correcting his habitual-offender status from third-offense to second-offense. It also addressed his objections to the PSIR's recommended scoring of Offense Variables (OVs) 1, 3, 4, and 12, only the last of which it granted.[1] With these decisions in mind, the court sentenced defendant as a second-offense habitual offender, MCL 769.10, to consecutive sentences of 30 to 90 months' imprisonment for the felon-in-possession conviction and two years' imprisonment for the felony-firearm conviction. Defendant now appeals by right.

II. SUBSTANTIVE SENTENCING CHALLENGES

Defendant raises two substantive sentencing challenges on appeal, each of which relates only to his felon-in-possession sentence: (1) the trial court violated his constitutional right to due process by relying on acquitted conduct when scoring certain OVs, and (2) it imposed a disproportionate and unreasonable (albeit within-guidelines) sentence. We address each argument in turn.

A. ACQUITTED CONDUCT

"[D]ue process bars sentencing courts from finding by a preponderance of the evidence that a defendant engaged in conduct of which he was acquitted." *People v Beck*, 504 Mich 605, 629; 939 NW2d 213 (2019). We review constitutional due-process claims de novo, and any underlying factual findings for clear error. *People v Brown*, 339 Mich App 411, 419; 984 NW2d 486 (2021). "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 also review de novo. *People v Hardy*, 494 Mich 430, 438; 835 NW2d 340 (2013).

This Court applies a rational-jury standard to determine whether a trial court relied on acquitted conduct when sentencing. Under that approach, sentencing courts can "consider facts and circumstances that were not, in a practical sense, put in dispute at trial, as long as those facts and circumstances were otherwise consistent with the jury's acquittal on a particular charge." *Brown*, 339 Mich App at 425. "Moreover, if a specific fact or circumstance was relevant to both the acquitted charge and the convicted charge—i.e., if there was an overlap of relevant conduct—

[1] The trial court reduced the score of OV 12 from 10 points to zero points, which in turn reduced his total OV score to 45 points. On appeal, defendant only challenges the trial court's scoring of OVs 1 and 3.

then the trial court [can] consider that fact or circumstance when sentencing on the convicted charge." *Id*.

In defendant's view, the trial court erroneously relied on acquitted conduct when scoring OV 1 and OV 3. That error, he claims, altered the sentencing guidelines range such that he is entitled to resentencing. For the reasons that follow, we find no error in the trial court's scoring of either variable and thus no entitlement to resentencing on that basis.

1. OV 1

The trial court did not improperly consider acquitted conduct or otherwise err when assessing 25 points for OV 1 for defendant's felon-in-possession conviction. A 25-point score is appropriate under MCL 777.31(a) when "[a] firearm was discharged at or toward a human being[.]" OV 1 is an "offense-specific variable," such that trial courts scoring it are "limited to considering the sentencing offense alone." *People v Biddles*, 316 Mich App 148, 166; 896 NW2d 461 (2016) (quotation marks and citations omitted).

In assessing 25 points for OV 1, the trial court acknowledged the jury's apparent conclusion that defendant did not discharge the gun "with the intent to murder" Murphy (as indicated by the AWIM acquittal). But it nonetheless believed the jury "found that the gun was fired," and that facts at trial indicated the gun was discharged toward—but not at—Murphy. Though there is no indication in the record that the jury made an express finding as to the gun's firing, we see no clear error in the trial court's ultimate factual determination that defendant discharged the gun toward Murphy during his illegal possession of it. Indeed, defendant admitted at trial that he shot Murphy but claimed he did so accidentally. This admission, together with evidence that the bullet grazed Murphy, allowed the trial court to infer that defendant discharged the gun "toward" Murphy, regardless of whether he did so purposefully or accidentally. See *People v McFarlane*, 325 Mich App 507, 532; 926 NW2d 339 (2018) ("[T]he trial court may rely on inferences that arise from the record evidence when making the findings underlying its scoring of offense variables."). The trial court thus correctly assessed 25 points for OV 1 in relation to defendant's felon-in-possession conviction.

Contrary to defendant's assertions on appeal, such score does not require improper reliance on acquitted conduct under the rational-jury standard. Defendant's discharge of the gun toward Murphy was "not, in a practical sense, put in dispute at trial," nor is it inconsistent with the jury's decision to acquit him of AWIM and unarmed robbery. *Brown*, 339 Mich App at 425. As discussed, defendant admitted to shooting Murphy. He disputed, however, whether he did so with the intent to kill Murphy or that he intended to permanently deprive Murphy of the gun. See *People v Ericksen*, 288 Mich App 192, 195-196; 793 NW2d 120 (2010) (elements of AWIM); *People v Haverson*, 291 Mich App 171, 177-178; 804 NW2d 757 (2010) (elements of unarmed robbery). A jury could accept these lack-of-intent arguments—and, thus, acquit defendant of AWIM and unarmed robbery—while still finding that he accidentally discharged the gun toward Murphy in the midst of a struggle. The trial court was thus free to consider defendant's discharge of the gun toward Murphy, which was relevant to both the acquitted charges (AWIM and unarmed robbery) and the sentencing charge (felon-in-possession). *Brown*, 339 Mich App at 425.

Insisting otherwise, defendant unpersuasively attempts to factually analogize this case to *Brown*. There, the jury acquitted the defendant of second-degree murder and voluntary manslaughter based on a statutory self-defense theory. *Brown*, 339 Mich App at 414-416, 426. Though the defendant's counsel "conceded at trial that [the defendant] intentionally shot" the victim, it was "clear"—"viewing the acquittal through the lens of the rational-jury standard"—that the acquittal demonstrated the jury's conclusion that the defendant "was justified in shooting [the victim]." *Id*. at 427. As such, the trial court could not hold the defendant "criminally responsible for [the] death in any way, including at sentencing," and therefore it erred by imposing a departure sentence based on the defendant's responsibility for the victim's death. *Id*. at 417-419, 426-427.

Unlike the self-defense-based acquittal in *Brown*, the acquittals here do not *necessarily* demonstrate that the jury found defendant without criminal responsibility for the gun's discharge. As discussed, the jury could have rationally determined that defendant discharged the gun accidentally, without any intent to kill Murphy or permanently deprive him of the gun. And unlike the defendant in *Brown*, defendant here did not formally assert that he acted in self-defense—only that the gun discharged accidentally. That is a distinction with a difference, making *Brown* inapplicable. In sum, the trial court permissibly considered the gun's discharge when sentencing defendant for his felon-in-possession conviction.

2. OV 3

We similarly reject defendant's challenge to the trial court's assessment of 10 points for OV 3. Under MCL 777.33, a trial court must assess 10 points for OV 3 when "[b]odily injury requiring medical treatment occurred to a victim[.]" MCL 777.33(1)(d). Though MCL 777.33 does not define the term "victim" for purposes of OV 3, our Supreme Court has interpreted it to mean "any person who is harmed by the defendant's criminal actions." *People v Laidler*, 491 Mich 339, 348; 817 NW2d 517 (2012). OV 3 is an offense-specific variable. *Biddles*, 316 Mich App at 165.

In support of its 10-point score for OV 3, the trial court stated: "So again, the gun was discharged. The jury didn't find for the specific intent to assault, but because the gun was discharged and it was in possession by [defendant] at the time of the offense, it did result in an injury." As discussed, the trial court did not clearly err by finding that the gun was discharged while in defendant's possession. We also discern no clear error in the trial court's apparent finding that Murphy was a victim for purposes of OV 3. Indeed, defendant has not challenged Murphy's trial testimony that he required—and in fact received—medical treatment for his grazing gunshot wounds. And from the fact of his injuries, the trial court could conclude that Murphy was "harmed" by defendant's criminal act of possessing the gun. It therefore appropriately assessed 10 points for OV 3.

These findings do not improperly incorporate acquitted conduct under the rational-jury standard. While they may overlap with those relevant to defendant's AWIM and unarmed robbery charges, they again are not inconsistent with the jury's acquittal of those charges. Rather, a jury could conclude that Murphy suffered injuries requiring medical attention as a result of defendant's possession of the gun, without also finding him to have intended to kill Murphy or permanently deprive Murphy of the gun. Defendant's assertion that the jury "determined that [he] was not

criminally responsible" for the gun's discharge is thus an overly broad interpretation of his relevant acquittals.

B. PROPORTIONALITY

Having determined that defendant failed to identify a scoring error relative to his felon-in-possession sentence, let alone one that altered the applicable guidelines minimum sentence range, we turn to his next argument: that the trial court's within-guidelines sentence was disproportionate and unreasonable. Again, we disagree.

We review within-guidelines sentences for reasonableness. *People v Armogeda*, ___ Mich ___, ___; ___ NW3d ___ (2026) (Docket No. 167760); slip op at 7. "[T]he proper inquiry when reviewing a sentence for reasonableness is whether the trial court abused its discretion by violating the principle of proportionality," under which trial courts must impose sentences "proportionate to the seriousness of the circumstances surrounding the offense and the offender." *People v Purdle*, 350 Mich App 446, 454; 32 NW3d 479 (2024) (quotation marks and citation omitted; alteration in original). This test concerns "whether the sentence is proportionate to the seriousness of the matter, not whether it departs from or adheres to the guidelines' recommended range." *People v Steanhouse*, 500 Mich 453, 475; 902 NW2d 327 (2017) (quotation marks and citation omitted). Within-guidelines sentences are presumptively proportionate, and the defendant bears the burden of demonstrating otherwise. *Purdle*, 350 Mich App at 454.

On review of the record, we hold that defendant fails to meet his burden of overcoming the presumption that his top-of-guidelines 30-month minimum sentence was proportionate and, thus, reasonable. Though the trial court provided minimal reasoning for its sentencing decision,[2] it appropriately considered the sentencing guidelines and stated that it based his sentence on "the circumstances." Our sentencing guidelines "embody the principle of proportionality," *People v Dixon-Bey*, 321 Mich App 490, 524; 909 NW2d 458 (2017), and we see no abuse of discretion in the trial court's apparent determination that the circumstances surrounding this offense justified a top-of-guidelines minimum sentence.

The sentencing judge presided over defendant's trial and was thus acutely aware of the evidence presented in this case. Such evidence showed that defendant started the altercation; reinitiated it after both men had walked away, despite knowing Murphy had a gun; escalated it further by taking the gun from Murphy unprompted (which involved a long struggle, during which defendant ignored bystanders' attempts to deescalate the situation); and pointed the gun at Murphy's head. Defendant's actions culminated in him shooting Murphy, even if accidentally.

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[2] While trial courts are not required to "expressly explain why a within-guidelines sentence is reasonable and proportionate," *People v Posey (On Remand)*, 349 Mich App 199, 207; 27 NW3d 137 (2023), they must nonetheless "justify the sentence in order to facilitate appellate review," *People v Lockridge*, 498 Mich 358, 392; 870 NW2d 502 (2015). The trial court sufficiently did so here through its clear reliance on the sentencing guidelines. *People v Conley*, 270 Mich App 301, 313; 715 NW2d 377 (2006). And regardless, though defendant notes the court's lack of "specific reasoning" during sentencing, he does not substantively challenge the sentence on that basis.

And when Murphy then fled into the gas station, defendant followed him while still brandishing the loaded gun. Despite defendant's attempts to minimize his role in the altercation and Murphy's ultimate shooting, these circumstances surrounding his possession of the gun are sufficiently serious to support a top-of-guidelines minimum sentence.

Disagreeing, defendant claims application of the following factors demonstrates that his within-guidelines sentence is disproportionate to the circumstances of his offense: "(1) the seriousness of the offense; (2) factors that were inadequately considered by the guidelines; and (3) factors not considered by the guidelines, such as the relationship between the victim and the aggressor, the defendant's misconduct while in custody, the defendant's expressions of remorse, and the defendant's potential for rehabilitation." *People v Walden*, 319 Mich App 344, 352-353; 901 NW2d 142 (2017) (quotation marks and citation omitted). While this nonexhaustive list of factors is indeed relevant to proportionality analyses, *id*. at 352-353, the trial court was aware during sentencing of all the facts on which defendant now relies. And regardless, defendant fails to identify any "unusual circumstances that would render [his] presumptively proportionate sentence disproportionate." *People v Ventour*, 349 Mich App 417, 430; 27 NW3d 660 (2023) (quotation marks and citation omitted). In this regard, he fails to carry his burden of demonstrating that his within-guidelines sentence is disproportionate.

To the extent defendant also claims that his sentence is disproportionate because he "does not have a substantial criminal history," we note that the sentencing guidelines took his criminal history into account through the scoring of prior record variables. *People v Babcock*, 469 Mich 247, 263-264; 666 NW2d 231 (2003). Defendant concedes that "his criminal history was adequately considered in the guidelines scoring," yet fails to explain how a sentence within the ensuing guidelines range is nonetheless disproportionate to himself as an offender. Finally, for the reasons already discussed, we reject defendant's arguments that the trial court incorrectly scored OVs 1 and 3 or otherwise erroneously relied on acquitted conduct when imposing his top-of-guidelines sentence.

III. PSIR

This appeal is not wholly without merit, for we agree he is entitled to a corrected PSIR.[3]

Defendant exercised his right at sentencing to challenge the accuracy of certain information contained in his PSIR. MCR 6.425(D)(1)(b) and (2)(a); MCL 771.14(6). The trial court found several of his challenges meritorious, which triggered its obligation to "order the probation officer to correct the report" accordingly. MCR 6.425(D)(2); see also MCL 771.14(6) ("If the court finds on the record that the challenged information is inaccurate or irrelevant, that finding shall be made

[3] Generally speaking, we "review[] a trial court's response to a defendant's challenge to the accuracy of a PSIR for an abuse of discretion." *People v Uphaus (On Remand)*, 278 Mich App 174, 181; 748 NW2d 899 (2008). Defendant's challenge does not implicate that standard, however, because he does not challenge the trial court's handling of his PSIR-related objections. Instead, he solely takes issue with its subsequent failure to order the correction of the PSIR to address his meritorious objections.

a part of the record, the presentence investigation report shall be amended . . . ."). We see no indication in the record that the court did so or that a corrected PSIR was otherwise prepared.

Though defendant does not claim that the trial court relied on any of the inaccurate or stricken information when sentencing him, this does not excuse the court's failure to order the correction of the PSIR. Indeed, a PSIR "follows the defendant to prison" and "can have ramifications related to security classification or parole[.]" *People v Lampe*, 327 Mich App 104, 120; 933 NW2d 314 (2019) (quotation marks and citations omitted). Accordingly, a PSIR "should accurately reflect any determination the sentencing judge has made concerning the accuracy or relevancy of the information contained in the report." *People v Uphaus (On Remand)*, 278 Mich App 174, 182; 748 NW2d 899 (2008) (quotation marks and citation omitted).

We therefore remand to the trial court for the sole purpose of ordering the correction of defendant's PSIR to (1) reflect that he is a second-offense, not a third-offense, habitual offender; (2) update the score for OV 12 to zero points and the total OV score to 45 points; (3) change the total jail credit to 204 days; and (4) revise any successfully challenged language as agreed during the June 9, 2025 sentencing hearing. In so doing, the trial court—and, as applicable, the appropriate probation officer—shall comply with the mandates of MCR 6.425(D)(2)(a) and MCL 771.14(5) and (6).

IV. CONCLUSION

For these reasons, we affirm defendant's sentence but remand for the ministerial task of correcting defendant's PSIR in a manner consistent with this opinion. We do not retain jurisdiction.

/s/ Brock A. Swartzle
/s/ Matthew S. Ackerman
/s/ Christopher M. Trebilcock