

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

CHADWICK LEON DAMON,

Defendant-Appellant.

UNPUBLISHED
December 8, 2009

No. 286770
Calhoun Circuit Court
LC No. 07-004119-FC

Before: Markey, P.J., and Bandstra and Murray, JJ.

PER CURIAM.

Defendant appeals by right his convictions for second-degree murder, MCL 750.317, and third-degree child abuse, MCL 750.136b(5), and his corresponding sentences of life imprisonment for the former conviction, and to 270 days in jail for the latter conviction. We affirm.

Defendant challenges the sentencing court's scoring of prior record variable (PRV) 7 and offense variables (OV) 3, 4, 7, and 19. A sentencing court's scoring decision will be upheld if there is any evidence in the record to support it. *People v Kegler*, 268 Mich App 187, 190; 706 NW2d 744 (2005).

First, defendant challenges the sentencing court's PRV 7 scoring of 10 points, reflecting that defendant has "[one] subsequent or concurrent conviction." MCL 777.57(1)(b). But PRV 7 only assesses points for subsequent or concurrent *felony* convictions. *People v Hendrick*, 261 Mich App 673, 683; 683 NW2d 218 (2004), rev'd in part on other grounds 472 Mich 555 (2005). Defendant argues that third-degree child abuse conviction should not be counted for PRV 7 purposes because it is a misdemeanor conviction.¹ Nevertheless, MCL 761.1(g) provides that a felony "means a violation of a penal law of this state for which the offender, upon conviction, may be punished by death or by imprisonment for more than 1 year or an offense expressly designated by law to be a felony." A two-year misdemeanor under the Penal Code falls within

¹ Defendant was convicted of third-degree child abuse when the previous version of MCL 750.136b(5) was in effect, which provided in relevant part that that offense was a misdemeanor punishable by up to two years imprisonment. MCL 750.136b was subsequently amended, and MCL 750.136b(6) now provides that third-degree child abuse is a felony.

the Code of Criminal Procedure's definition of "felony," and two-year misdemeanors are considered as felonies for the purposes of habitual-offender, probation, and consecutive sentencing statutes. *People v Smith*, 423 Mich 427, 434, 439; 378 NW2d 384 (1985). The former MCL 750.136b(5) is a felony for purposes of PRV 7 because it provides for a maximum imprisonment of two years. Here, defendant had one concurrent conviction; thus, the scoring of PRV 7 is upheld. *Kegler, supra* at 190.

Second, defendant challenges the sentencing court's OV 3 scoring of 25 points, reflecting that a "[l]ife threatening or permanent incapacitating injury occurred to a victim." MCL 777.33(1)(c). An OV 3 score of 25 points is warranted if a defendant inflicts a physical injury that results in death. See *People v Houston*, 473 Mich 399, 401-402; 702 NW2d 530 (2005). In the instant case, there was ample evidence that defendant, a 21-year-old former Marine, inflicted a blunt force trauma to the head of the four-year-old victim, and that the victim ultimately died as a result of that injury. Thus, we uphold the sentencing court's scoring of OV 3 at 25 points. *Id.*

Third, defendant challenges the sentencing court's OV 4 scoring of 10 points, reflecting that a "[s]erious psychological injury requiring professional treatment occurred to a victim." MCL 777.34(1)(a). Here, the sentencing court linked the blunt force trauma that resulted in the victim's death to a psychological injury. One physician testified that due to the severity of the injury, the victim would have either been dazed and then unconscious or immediately unconscious after sustaining that head injury. It appears implausible to infer psychological injury from such an event; thus, the sentencing court's finding was clearly erroneous. *People v Babcock*, 469 Mich 247, 264-265; 666 NW2d 231 (2003). Nevertheless, evidence in the record supports the sentencing court's scoring of 10 points for OV 4. There was testimony that defendant disciplined the victim using military-style punishment. Further, there was testimony that the victim appeared to be in fear of defendant. Significantly, defendant told a physician that "I've taught [the victim] not to complain" in response to a query if the victim was complaining about any injuries or pain before she was admitted to the emergency room. This evidence supports a reasonable inference that the victim suffered a psychological injury on the basis of defendant's treatment of her. Although for the wrong reason, the sentencing court reached the correct result. *People v Bauder*, 269 Mich App 174, 187; 712 NW2d 506 (2005).

Fourth, defendant challenges the sentencing court's OV 7 scoring of 50 points, reflecting that "[a] victim was treated with sadism, torture, or excessive brutality or conduct designed to substantially increase the fear and anxiety a victim suffered during the offense." MCL 777.37(1)(a). At trial, there was compelling testimony and photographic evidence regarding the victim's injuries: three bruises on the scalp, two bruises on the right side of the face, multiple bruises on the upper anterior chest, a bruise on the left scapula, multiple bruises on the lower back, multiple bruises on the legs, a bruise on the right wrist, a bruise on the left elbow, a laceration on the back of the head, and subdural bleeding and brain swelling. "Brutality" is not defined in the statute, but Random House Webster's College Dictionary (1997) defines it as "the quality or state of being brutal," and "brutal" as "savage; cruel; inhuman" or "harsh; severe." Defendant's severe beating of the four-year-old victim that resulted in her death falls within any reasonable understanding of excessively brutal conduct. Thus, the record supports a score of 50 points for OV-7. *Kegler, supra* at 190.

Finally, defendant challenges the sentencing court's OV 19 scoring of 10 points, reflecting that "[t]he offender otherwise interfered with or attempted to interfere with the

administration of justice.” MCL 777.49(c). The phrase “interfered with or attempted to interfere with the administration of justice” is broad, including but not limited to acts constituting obstruction of justice. *People v Barbee*, 470 Mich 283, 286; 681 NW2d 348 (2004). Here, police officers approached defendant outside of the hospital, where they asked him to go to the police station so they could obtain more information relating to the death of the victim. Defendant refused to comply, so the police had to subdue defendant with pepper spray. Further, the record demonstrates that defendant misled the police and first responders regarding how the victim sustained her injuries. “The investigation of crime is critical to the administration of justice.” *Id.* at 288. We conclude there was evidence to support an inference that defendant interfered with the administration of justice, and the sentencing court properly scored 10 points for OV 19. *Kegler, supra* at 190.

We affirm.

/s/ Jane E. Markey

/s/ Richard A. Bandstra

/s/ Christopher M. Murray