

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ERNEST TENNYSON REESE,

Defendant-Appellant.

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UNPUBLISHED

September 13, 2007

No. 272355

Chippewa Circuit Court

LC No. 05-008135-FH

Before: Markey, P.J., and Saad and Wilder, JJ.

MEMORANDUM.

Defendant appeals from his sentence of two to eight years in prison imposed for his conviction of prisoner in possession of a weapon, MCL 800.283(4). We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant was convicted of prisoner in possession of a weapon after a bench trial. The evidence showed that defendant displayed a sock with a padlock tied to it to a prison employee.

The statutory sentencing guidelines, as adjusted for defendant's status as a third habitual offender, MCL 769.11, recommended a minimum term range of 14 to 43 months. The trial court sentenced defendant to two to eight years in prison, to be served consecutively to the sentence he was serving when he committed the instant offense.

Under the sentencing guidelines act, if a minimum sentence is within the appropriate sentencing guidelines range, we must affirm the sentence and may not remand for resentencing absent an error in the scoring of the guidelines or inaccurate information relied on by the trial court in determining the sentence. MCL 769.34(10); *People v Kimble*, 470 Mich 305, 309; 684 NW2d 669 (2004). A party may not raise on appeal an issue challenging the scoring of the guidelines or the accuracy of the information relied upon in determining a sentence that is within the appropriate guidelines range unless the party has raised the issue at sentencing, in a proper motion for resentencing, or in a proper motion to remand. MCL 769.34(10); *Kimble, supra*.

Defendant argues that he is entitled to resentencing because the trial court misscored two offense variables based on facts that were not found beyond a reasonable doubt as required by *Blakely v Washington*, 542 US 296; 124 S Ct 2531; 159 L Ed 2d 403 (2004). We disagree.

Defendant did not object to the scoring of the guidelines at the time of sentencing, and he neither moved for resentencing nor filed a proper motion to remand. Thus, the issue is not preserved, and we review for plain error. *People v Carines*, 460 Mich 750, 763-764; 597 NW2d 130 (1999). Our Supreme Court has held that the principles articulated in *Blakely, supra*, do not apply to Michigan's indeterminate sentencing scheme. *People v Drohan*, 475 Mich 140, 159-160, 164; 715 NW2d 778 (2006). The trial court imposed a sentence within the guidelines. Defendant has not demonstrated that plain error occurred. Defendant is not entitled to resentencing.<sup>1</sup>

Affirmed.

/s/ Jane E. Markey  
/s/ Henry William Saad  
/s/ Kurtis T. Wilder

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<sup>1</sup> The United States Supreme Court vacated and remanded *People v McCuller*, 475 Mich 176; 715 NW2d 798 (2006), for reconsideration in light of *Cunningham v California*, \_\_\_ US \_\_\_; 127 S Ct 856; 166 L Ed 2d 856 (2007). *McCuller, supra*, dealt with Michigan's intermediate sanction sentencing scheme. An intermediate sanction is not at issue in the instant case; therefore, the resolution of this case does not depend on our Supreme Court's disposition of *McCuller, supra*, on remand.