

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JOHN EARL PARKER,

Defendant-Appellant.

UNPUBLISHED
September 6, 2007

No. 268695
Wayne Circuit Court
LC No. 05-007563-01

Before: Meter, P.J., and Kelly and Fort Hood, JJ.

PER CURIAM.

Defendant was convicted at a bench trial of arson of a dwelling house, MCL 750.72, and was sentenced as a fourth-offense habitual offender, MCL 769.12, to seven to 20 years' imprisonment. He appeals as of right. We affirm. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

At trial, the victim testified that on July 10, 2005, his house in Detroit burned. Defendant was the ex-boyfriend of the victim's daughter and had been allowed to stay with the victim after his daughter ended her relationship with defendant. Defendant and the victim had a conflict over defendant allegedly using the victim's truck to steal something from another man's home. The argument ended with the victim kicking defendant out of his home. Defendant threatened to burn down the victim's house and kill him. The victim's daughter checked on her father's home on her way to work on July 10 and saw defendant and another man outside the home. Defendant was flicking a lighter in the yard. An arson investigator testified that the fire started with the use of an accelerant on the enclosed rear porch.

Defendant argues that there was insufficient evidence to convict him of arson of a dwelling house.

In reviewing the sufficiency of the evidence in a criminal case, this Court must review the evidence in the light most favorable to the prosecutor and determine whether a rational trier of fact could have found that the essential elements of the crime were proved beyond a reasonable doubt. *People v Wolfe*, 440 Mich 508, 513-515; 489 NW2d 748 (1992), amended 441 Mich 1201 (1992). This standard applies to bench trials. *People v Legg*, 197 Mich App 131, 132; 494 NW2d 797 (1992). This Court must resolve all evidentiary conflicts in favor of

the prosecution. *People v Terry*, 224 Mich App 447, 452; 569 NW2d 641(1997).
[*People v Harmon*, 248 Mich App 522, 524; 640 NW2d 314 (2001).]

A person who willfully or maliciously burns a dwelling house, either occupied or unoccupied, or the contents of it, is guilty of arson of a dwelling house. MCL 750.72; *People v Barber*, 255 Mich App 288, 294-295; 659 NW2d 674 (2003).

The evidence in this case established that defendant and the victim had an argument and that defendant later approached the victim while armed with a gun, slapped and cursed the victim, and threatened to kill him and burn his house. The morning of the fire, the victim's daughter witnessed defendant outside her father's home flicking a lighter in the yard. Finally, the arson investigator testified that the fire started with the use of an accelerant on the enclosed rear porch. Viewed in a light most favorable to the prosecution, the evidence was sufficient for a rational trier of fact to conclude that defendant committed arson of a dwelling house.

Defendant also argues that the trial court's factual findings were inadequate because, defendant contends, the court found only one fact – that defendant was seen flicking a lighter in the back of the home. We disagree. In addition to the above fact, which placed defendant at the scene with a lighter, the trial court specifically accepted the testimony of witnesses as true, noted that some of the evidence in the case was circumstantial, and found that the circumstantial and direct evidence together was sufficient to find defendant guilty. The court's findings adequately demonstrated that it was aware of the factual issues and correctly applied the law. See *People v Fair*, 165 Mich App 294, 297-298; 418 NW2d 438 (1987).

Defendant lastly argues that resentencing is necessary because the trial court exceeded the guidelines without articulating substantial and compelling reasons for doing so. The Sentencing Information Report reflected that the guidelines were scored at 72 to 120 months. The court sentenced defendant to a term of years of 84 months to 20 years – within the sentencing guidelines as scored. While defendant and the prosecutor disagreed on the scoring on the guidelines, the trial court, by its actions, clearly rejected defendant's request to rescore the guidelines.

A trial court must articulate its reasons for imposing a sentence on the record at the time of sentencing. See *People v Triplett*, 432 Mich 568, 573; 442 NW2d 622 (1989). The articulation requirement is satisfied if the trial court expressly relies on the sentencing guidelines in imposing the sentence or if it is clear from the context of the remarks preceding the sentence that the trial court relied on the sentencing guidelines. *People v Lawson*, 195 Mich App 76, 77-78; 489 NW2d 147 (1992). In this case, the trial court discussed the sentencing guidelines with both the defense and the prosecutor. The court then sentenced defendant within the guidelines as scored, without changing the scoring in the Sentencing Information Report. While the court may have been inartful in its articulation, it clearly understood the guidelines as scored and sentenced defendant within them. Resentencing is not necessary. *People v Conley*, 270 Mich App 301, 313; 715 NW2d 377 (2006).

Affirmed.

/s/ Patrick M. Meter
/s/ Kirsten Frank Kelly
/s/ Karen M. Fort Hood