

SUPREME COURT OF MICHIGAN

People of the State of Michigan v. Shannon Nicole Hindman, 472 Mich. 875

693 N.W.2d 384 (Mich. 2005) · No. 125763 & (44) · Decided March 25, 2005

SUMMARY

The Michigan Supreme Court reversed part of the Court of Appeals' judgment and remanded for resentencing on the defendant's second-degree murder conviction under properly scored sentencing guidelines. The court held that offense variable 10 was improperly scored based on exploitation of the defendant's children rather than the crime victim, and that offense variable 18 was improperly scored because vehicle operation was not an element of second-degree murder. The court also directed the circuit court to reconsider the scoring of offense variable 3 and denied leave to appeal in all other respects.

CASE DETAILS

COURT	Supreme Court of Michigan
WRITING FOR THE COURT	Weaver, J. (dissenting)
JURISDICTION	Michigan
DECIDED	March 25, 2005
DOCKET	125763 & (44)
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	The Michigan Supreme Court considered defendant's application for leave to appeal from the Michigan Court of Appeals' judgment and, in lieu of granting leave, reversed in part and remanded for resentencing.
STANDARD OF REVIEW	The court reviewed the application and sentencing-guideline scoring issues under the applicable statutory provisions; preserved scoring errors required resentencing when the erroneous scoring affected the sentence.
PRECEDENTIAL VALUE	Published Michigan Supreme Court opinion; precedential
PARTIES	Shannon Nicole Hindman v. People of the State of Michigan

TOPICS

sentencing guidelines

sentencing

statutory interpretation

preservation of error

appellate procedure

PRACTICE AREAS

criminal law

criminal sentencing

appellate procedure

QUESTIONS PRESENTED

1. Whether offense variable 10 was properly scored on the basis that defendant exploited her own children, who were not victims of the second-degree murder offense.
2. Whether offense variable 18 was properly scored when operation of a vehicle was not an element of second-degree murder.
3. Whether the sentencing guidelines required reconsideration of the offense-variable 3 score under former Michigan Compiled Laws § 777.33(2)(c).
4. Whether defendant was entitled to resentencing because she raised the offense-variable 10 scoring issue at sentencing.

HOLDINGS

1. Offense variable 10 must be scored on the basis of whether the offender exploited a victim's specified characteristic or a qualifying relationship; the circuit court erred by scoring defendant for exploiting her own children when they were merely passengers and were not victims of the criminal offense being scored.
2. Offense variable 18 may be scored only when an element of the offense or attempted offense involves the operation of a vehicle; because vehicle operation is not an element of second-degree murder, the circuit court erred in scoring offense variable 18.
3. On remand, the circuit court must consider whether the 35-point score for offense variable 3 was appropriate under the applicable language of former M.C.L. § 777.33(2)(c).

KEY QUOTATIONS

“Offense variable 10 is to be scored at 10 points if the “offender exploited a victim's physical disability, mental disability, youth or agedness, or a domestic relationship or the offender abused his or her authority status.”” (693 N.W.2d 384)

“However, defendant here was assessed points, not on the basis of having exploited the second-degree murder victim, but on the basis of having exploited her own children who were merely passengers in her car and not the victims of the criminal offense being scored.” (693 N.W.2d 384)

“Offense variable 18 is to be scored “if an element of the offense or attempted offense involves the operation of a vehicle.”” (693 N.W.2d 384)

“I continue to believe that the plain language of M.C.L. § 769.34(10) requires a defendant to preserve a scoring error by “rais[ing] the issue at sentencing in a proper motion for resentencing, or in a proper motion to remand filed in the court of appeals.”” (693 N.W.2d 385)

FACTUAL BACKGROUND

Defendant was convicted of second-degree murder arising from an offense involving the operation of a vehicle. At sentencing, the circuit court assessed points under offense variables 10 and 18, including points for exploiting defendant's own children, who were passengers but not victims of the offense, and for operation of a vehicle even though vehicle operation was not an element of second-degree murder. The court also directed reconsideration of the scoring of offense variable 3 under former Michigan Compiled Laws § 777.33(2)(c).

PROCEDURAL HISTORY

The Saginaw Circuit Court sentenced defendant for second-degree murder using offense-variable scores that defendant challenged. The Michigan Court of Appeals entered a judgment on January 22, 2004. The Michigan Supreme Court reversed that judgment in part, ordered resentencing under properly scored guidelines, and denied leave to appeal in all other respects.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

Remand to the Saginaw Circuit Court for resentencing on the second-degree murder conviction under properly scored sentencing guidelines. The circuit court must correct the offense-variable 10 and 18 scores and consider whether the 35-point offense-variable 3 score was appropriate under former M.C.L. § 777.33(2)(c).

CASES CITED

- People v. Kimble, 470 Mich. 305, 310-312, 684 N.W.2d 669 (2004)

OPINION

PER CURIAM.

693 N.W.2d 384 (2005) 472 Mich. 875 PEOPLE of the State of Michigan, Plaintiff-Appellee v. Shannon Nicole HINDMAN, Defendant-Appellant. Docket No. 125763 & (44). COA No. 244904. Supreme Court of Michigan. March 25, 2005.

On order of the Court, the application for leave to appeal the January 22, 2004 judgment of the Court of Appeals is considered and, pursuant to MCR 7.302(G)(1), in lieu of granting leave to appeal, we REVERSE the judgment of the Court of Appeals in part and REMAND this case to the Saginaw Circuit Court for resentencing on defendant's second-degree murder conviction under properly scored sentencing guidelines.

Offense variable 10 is to be scored at 10 points if the "offender exploited a victim's physical disability, mental disability, youth or agedness, or a domestic relationship or the offender abused his or her authority status." M.C.L. § 777.40(1)(b) [emphasis added].

However, defendant here was assessed points, not on the basis of having exploited the second-degree murder victim, but on the basis of having exploited her own children who were merely passengers in her car and not the victims of the criminal offense being scored.

Therefore, the circuit court erred in scoring offense variable 10 and because defendant raised this issue at sentencing, she is entitled to resentencing. *People v. Kimble*, 470 Mich. 305, 310-311, 684 N.W.2d 669 (2004); M.C.L. § 769.34(10). Offense variable 18 is to be scored "if an element of the offense or attempted offense involves the operation of a vehicle."

M.C.L. § 777.22(1). The operation of a vehicle is not an element of second-degree murder. Therefore, the circuit court erred in scoring offense variable 18. *Kimble*, supra at 312, 684 N.W.2d 669; M.C.L. § 769.34(10).

In addition, in rescoreing the guidelines, the circuit court should consider whether it was appropriate to score 35 points under offense variable 3, in light of the applicable language of former M.C.L. § 777.33(2)(c).

In all other respects, leave to appeal is DENIED. *WEAVER, J.*, dissents and states as follows: I dissent from the order remanding for resentencing. I continue to believe that the plain language of M.C.L. § 769.34(10) requires a defendant to preserve a scoring *385 error by "rais[ing] the issue at sentencing in a proper motion for resentencing, or in a proper motion to remand filed in the court of appeals."

See e.g. *People v. Kimble*, 470 Mich. 305, 684 N.W.2d 669 (2004) (*WEAVER J.*, dissenting). Defendant did not preserve her objection to the scoring of either offense variable 3 or 18 and, thus, cannot now challenge the scoring of those variables.

Moreover, although defendant did object to the scoring of offense variable 10, even if the objection had been sustained, the sentence imposed was within the appropriate guidelines range making review unnecessary. To hold that the plain error doctrine may be applied, as a majority did in *People v. Kimble*, supra at 312, 684 N.W.2d 669, and does implicitly in this case, undermines the plain language of M.C.L. § 769.34(10) that forbids a party to raise unpreserved scoring errors on appeal.