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STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED February 03, 2026 9:04 AM
v	No. 369505 Genesee Circuit Court
KENNETH ROY GAY, Defendant-Appellant.	LC No. 2022-049687-FC

Before: YATES, P.J., and BOONSTRA and YOUNG, JJ.

PER CURIAM.

Defendant-Appellant, Kenneth Roy Gay, was awaiting sentencing at his home following his no contest plea to one count of third-degree criminal sexual conduct, MCL 750.520d, when he attempted to take his own life. Gay was hospitalized as a result. At a rescheduled sentencing date, the trial court sentenced Gay after it scored 10 points for Offense Variable (OV) 19 based on Gay's suicide attempt. Because OV 19 should not have been scored based on Gay's suicide attempt, and because the 10 points altered Gay's guidelines range, we vacate his sentence and remand for resentencing.

I. FACTUAL AND PROCEDURAL HISTORY

On July 21, 2023, Gay pleaded no contest to third-degree criminal sexual conduct (CSC-III), MCL 750.520d, for sexually assaulting his step-grandson who was under the age of 16 years. Gay's sentencing was scheduled to take place in Genesee Circuit Court on September 25, 2023, but Gay did not appear for that hearing. At the hearing, the prosecutor informed the trial court that Gay had attempted suicide and was in the hospital for medical treatment. The trial court rescheduled sentencing for October 16, 2023.[1]

[1] The trial court indicated that it would adjourn sentencing by one week; however, after defense counsel indicated that he was "going out of town" on a trip to Florida, the trial court postponed the sentencing hearing further.

At the rescheduled sentencing hearing, the prosecution requested that the trial court score OV 19 at 10 points because Gay's suicide attempt was "absolute (sic) an attempt to avoid the administration of justice as it gets," and Gay's "intent the whole time was never to own up to the consequences of this plea" and "[t]he attempt on his own life was a means of sidestepping that." Gay's attorney argued that Gay's suicide attempt was the product of mental illness and that Gay did not intend to interfere with the judicial proceedings. In his allocution, Gay stated that his suicide attempt "had nothing at all to do with the—the coming to court for my sentencing," and explained that his son "was trying to get full custody of his three kids from his ex-wife but his attorney had told him, as long as [Gay's case] was hanging over . . . he would probably not be granted custody." Gay said, "if I'm not here, then maybe he will have a chance to get those kids."

The trial court agreed with the prosecution and scored OV 19 at 10 points, citing *People v Hershey*, 303 Mich App 330, 343-344; 844 NW2d 127 (2013). The trial court offered a further explanation at the close of sentencing:

> It just seems like the selfish self-righteous spew that you still see yourself as the victim. And, oh, I should have killed myself so [that your son] could get custody. That's why I was doing it. You're a coward. You are a coward who couldn't face what you have done to this child and that you couldn't face this court to be sentenced.

By virtue of the scoring of OV 19, Gay's minimum sentencing guidelines range increased from 24 to 40 months to 36 to 60 months. The trial court sentenced Gay to serve 60 to 180 months' imprisonment, with jail credit for 21 days, and to pay a fine of $250.

Gay filed an application for leave to appeal in this Court, raising challenges to both the term of incarceration and the fine. In lieu of granting leave, this Court vacated the fine but "[i]n all other respects" denied the application "for lack of merit in the grounds presented." Judge GARRETT agreed with vacating the fine but would have granted the application "to consider whether defendant's attempted suicide constituted interference with the administration of justice for purposes of scoring Offense Variable [(OV)] 19." *People v Gay*, unpublished order of the Court of Appeals, entered March 18, 2024 (Docket No. 369505). Gay filed an application to appeal in our Supreme Court, which, in lieu of granting leave, remanded the case to this Court "for consideration as on leave granted." *People v Gay*, 515 Mich 914; 10 NW3d 663 (2024).

On remand, Gay only challenges the trial court's scoring of OV 19. Gay claims that OV 19 should have been scored at zero points, which would reduce his total OV score from 80 points to 70 points, and alter his minimum sentencing guidelines range.

II. ANALYSIS

A. STANDARD OF REVIEW

The facts of this case are largely undisputed—Gay attempted to take his own life in his home while awaiting sentencing; sentencing was delayed as a result. We are ultimately presented then, with a question of law—can these circumstances be scored under OV 19? "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, which an appellate court reviews de novo." *People v Hardy*, 494 Mich 430, 438; 835 NW2d 340 (2013).

B. OV 19 WAS IMPROPERLY SCORED

MCL 777.49 governs OV 19, and states in relevant part:

> Offense variable 19 is threat to the security of a penal institution or court or interference with the administration of justice or the rendering of emergency services. Score offense variable 19 by determining which of the following apply and by assigning the number of points attributable to the one that has the highest number of points.
>
> * * *
>
> (c) The offender otherwise interfered with or attempted to interfere with the administration of justice, or directly or indirectly violated a personal protection order…….…….. 10 points

"[T]he plain and ordinary meaning of "interfere with the administration of justice" for purposes of OV 19 is to oppose so as to hamper, hinder, or obstruct the act or process of administering judgment of individuals or causes by judicial process." *Hershey*, 303 Mich App at 343. "OV 19 is generally scored for conduct that constitutes an attempt to avoid being caught and held accountable for the sentencing offense." *People v Sours*, 315 Mich App 356, 349; 890 NW2d 401 (2016).

We conclude, under the circumstances of this case, that Gay did not, by attempting suicide, "come into opposition" with the justice system or even attempt to. Rather, he tried to remove himself from it entirely by way of death. Gay's behavior is categorically different than other scorable conduct such as:

> providing a false name to the police, threatening or intimidating a victim or witness, telling a victim or witness not to disclose the defendant's conduct, fleeing from police contrary to an order to freeze, attempting to deceive the police during an investigation, interfering with the efforts of store personnel to prevent a thief from leaving the premises without paying for store property, and committing perjury in a court proceeding. [*Hershey*, 303 Mich App at 344 (cleaned up).]

Each of those acts "hampers, hinders or obstructs the process of administering judgment of individuals or causes by judicial process." *Id*. And each of those acts "constitutes an attempt to avoid being caught and held accountable for the sentencing offense." *Sours*, 315 Mich App at 349.

This Court previously addressed the precise issue before us in *People v Taamneh*, unpublished per curiam opinion of the Court of Appeals, issued August 22, 2019 (Docket No.

342452; 342453).[2] In *Taamneh*, the defendant attempted suicide on the day the jury's verdict was to be received. This Court held "that the suicide attempts were not a proper basis to score OV 19," noting that "by all accounts, the suicide attempts were genuine attempts to end his life and not directed at delaying proceedings." *Id*. at 6.

Based on the record before us, we find no basis to conclude that Gay's suicide attempt was anything other than a "genuine attempt[] to end his life and not directed at delaying proceedings," *id*., or to reach a different result in the circumstances of this case.[3] We therefore similarly conclude that Gay's suicide attempt was "not a proper basis to score OV 19." *Id*. Because the scoring of OV 19 increased Gay's guidelines range, he is entitled to resentencing. *People v Francisco*, 474 Mich 82; 711 NW2d 44 (2006).

Vacated and remanded for resentencing. We do not retain jurisdiction.

/s/ Christopher P. Yates
/s/ Mark T. Boonstra
/s/ Adrienne N. Young

[2] Unpublished opinions lack precedential value, but we may consider their reasoning persuasive. *People v Daniels*, 311 Mich App 257, 268 n 4; 874 NW2d 732 (2015).

[3] Particularly given the trial court's and the prosecution's focus on Gay's conduct as a deliberate attempt to avoid sentencing (for which we find no support in the record), we are not persuaded that the minimal actual delay in defendant's sentencing should alter our conclusion.