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STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED August 14, 2026 9:54 AM
v	No. 375344 Kent Circuit Court
SHERI LYNN LENARTZ, Defendant-Appellant.	LC No. 23-009957-FC

Before: GADOLA, C.J., and RIORDAN and SWARTZLE, JJ.

PER CURIAM.

Defendant appeals by leave granted[1] the sentences from her plea-based convictions of extortion, MCL 750.213, and attempted third-degree criminal sexual conduct (CSC-III), MCL 750.520d(1)(b); MCL 750.92. Defendant was sentenced to concurrent terms of 5 to 20 years' imprisonment for the extortion conviction and 2 to 5 years' imprisonment for the attempted CSC-III conviction. On appeal, defendant argues that the trial court erred by scoring three offense variables (OVs). We agree with defendant that at least one OV was incorrectly scored and that the guidelines change as a result. Therefore, we vacate her sentence and remand to the trial court for resentencing.

I. BASIC FACTS AND PROCEDURAL HISTORY

This case arises from a relationship dispute in Grand Rapids on July 26, 2023. On that day, the victim—a parolee and defendant's former boyfriend—came to defendant's apartment to drop off some boxes and pick up some of his belongings. Defendant asked the victim to get back together with her, and when he refused, defendant threatened to falsely tell the police that the victim had molested defendant's granddaughter. Defendant then prevented the victim from leaving and repeatedly asked him to have sex with her. Defendant and the victim eventually entered her apartment, and the two performed oral sex on each other. The victim recorded the

[1] *People v Lenartz*, unpublished order of the Court of Appeals, entered June 9, 2025 (Docket No. 375344).

audio from the encounter on his cellular phone. Several days later, defendant falsely reported the victim to the police for molesting defendant's granddaughter and assaulting defendant. Defendant's false report was discovered shortly thereafter, once the victim disclosed the audio to the police.

At a plea hearing, defendant pleaded guilty to extortion and no contest to attempted CSC-III in exchange for dismissal of other charges. At sentencing, the trial court determined that the applicable OV score was 60 points, which included, in relevant part, a 15-point score for OV 10, MCL 777.40; a 10-point score for OV 12, MCL 777.42; and a 25-point score for OV 19, MCL 777.49. As noted, the trial court sentenced defendant to a minimum of five years in prison, which was within the minimum guidelines range of 51 to 85 months in prison.

This appeal followed.

II. STANDARD OF REVIEW

We review de novo the trial court's "interpretation and application of the legislative sentencing guidelines, MCL 777.1 *et seq*.," *People v McGraw*, 484 Mich 120, 123; 771 NW2d 655 (2009), including "the interpretation of the sentencing variables," *People v Horton*, 345 Mich App 612, 616; 8 NW3d 622 (2023). The trial court's findings of fact "are reviewed for clear error and must be supported by a preponderance of the evidence." *People v Hardy*, 494 Mich 430, 438; 835 NW2d 340 (2013). "Clear error is established when the appellate court is left with a firm and definite conviction that an error occurred." *Horton*, 345 Mich App at 616. When scoring the guidelines, "a court may consider all record evidence, including the contents of a [presentence investigation report], plea admissions, and testimony presented at a preliminary examination." *Id*.

III. ANALYSIS

Defendant raises three arguments on appeal: (1) she did not engage in predatory conduct and therefore should not have been assigned 15 points for OV 10; (2) she did not commit two contemporaneous felonious criminal acts against a person and therefore should not have been assigned 10 points for OV 12; and (3) she did not threaten the security of a penal institution or court and therefore should not have been assigned 25 points for OV 19. Defendant asserts that OV 10 should be scored at 10 points, OV 12 should be scored at zero points, and OV 19 should be scored at 10 points. The prosecution responds that OV 10 was correctly scored at 15 points, OV 12 should have been scored at 25 points, and OV 19 should be scored at 10 points.

In light of the prosecution's concession that OV 19 should be scored at 10 points, not 25 points,[2] thereby reducing the overall OV score of the sentencing guidelines from 60 to 45 points,

[2] MCL 777.49 provides that a 25-point score for OV 19 is warranted when "[t]he offender by his or her conduct threatened the security of a penal institution or court," MCL 777.49(1)(a), and a 10-point score is warranted when "[t]he offender . . . interfered with or attempted to interfere with the administration of justice," MCL 777.49(1)(c). The parties agree that defendant did not threaten the security of a penal institution or court, but she attempted to interfere with the administration of justice by making a false police report.

we must remand this case to the trial court for resentencing because the now-applicable guidelines range is reduced to 45 to 75 months in prison. See *People v Francisco*, 474 Mich 82, 91-92; 711 NW2d 44 (2006). Nonetheless, as the proper scores for OV 10 and OV 12 are likely to be disputed on remand, we briefly address those two arguments.

A. OV 10

MCL 777.40 defines OV 10, in relevant part:

> (1) Offense variable 10 is exploitation of a vulnerable victim. Score offense variable 10 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:
>
> (a) Predatory conduct was involved ..... 15 points
>
> (b) 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 ..... 10 points
>
> * * *
>
> (2) The mere existence of 1 or more factors described in subsection (1) does not automatically equate with victim vulnerability.
>
> (3) As used in this section:
>
> (a) "Predatory conduct" means preoffense conduct directed at a victim . . . for the primary purpose of victimization.
>
> (b) "Exploit" means to manipulate a victim for selfish or unethical purposes. Exploit also means to violate section 50b of the Michigan penal code, 1931 PA 328, MCL 750.50b, for the purpose of manipulating a victim for selfish or unethical purposes.
>
> (c) "Vulnerability" means the readily apparent susceptibility of a victim to injury, physical restraint, persuasion, or temptation.

Predatory conduct is conduct that "itself created or enhanced the vulnerability in the first place . . . ." *People v Huston*, 489 Mich 451, 461; 802 NW2d 261 (2011). " 'Predatory conduct' under the statute is behavior that precedes the offense, directed at a person for the primary purpose of causing that person to suffer from an injurious action or to be deceived." *People v Cannon*, 481 Mich 152, 161; 749 NW2d 257 (2008). But not all preoffense conduct qualifies as predatory, as "[f]ew criminal offenses arise utterly spontaneously and without forethought." *Huston*, 489 Mich at 461. Rather, predatory conduct encompasses "only those forms of preoffense conduct that are commonly understood as being predatory in nature, e.g., lying in wait and stalking, as opposed to purely opportunistic criminal conduct or preoffense conduct involving nothing more than run-of-the-mill planning to effect a crime or subsequent escape without detection." *Id*. at 462 (quotation marks and citation omitted). Further, importantly for the purposes of this case, "[t]he use of prefix

'pre' in the term 'preoffense' indicates that, to be considered predatory, the conduct must have occurred before the commission of the offense." *Cannon*, 481 Mich at 160.

In this case, defendant did not engage in predatory conduct, as the trial court found, by exploiting the victim's parolee status to coerce him into sexual conduct. Rather, as defendant correctly argues, her threats to have him sent to prison on the basis of his parolee status were not preoffense conduct because they constituted the very acts of extortion for which she was convicted. See MCL 750.213. In other words, by threatening the victim with his parolee status, defendant committed the offense of extortion for which she was convicted. See *id*. Because "predatory conduct" must occur before the commission of the offense, see *Cannon*, 481 Mich at 160, it follows that threatening the victim on the basis of his parolee status cannot constitute "preoffense conduct" for the purposes of OV 10, see MCL 777.40(1)(a). Therefore, the trial court erred by relying on this reasoning to score 15 points for OV 10.

On appeal, the prosecution argues for the first time that defendant engaged in predatory conduct by luring the victim to her apartment and, as a result, a 15-point score for OV 10 is warranted on this alternate basis. We decline to address this argument because it was not addressed by the trial court below. However, because resentencing on remand is a de novo proceeding, the trial court may consider this argument in the first instance. See *People v Lampe*, 327 Mich App 104, 112; 933 NW2d 314 (2019) ("By ordering 'resentencing' without any specific instructions or any prohibitions on scoring [certain] OVs, this Court returned the case to the trial court in a presentence posture, allowing the trial court to consider every aspect of defendant's sentences de novo.").

B. OV 12

MCL 777.42 states the following, in relevant part:

> (1) Offense variable 12 is contemporaneous felonious criminal acts. Score offense variable 12 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:
>
> (a) Three or more contemporaneous felonious criminal acts involving crimes against a person were committed ..... 25 points
>
> (b) Two contemporaneous felonious criminal acts involving crimes against a person were committed ..... 10 points
>
> * * *
>
> (d) One contemporaneous felonious criminal act involving a crime against a person was committed ..... 5 points
>
> * * *
>
> (g) No contemporaneous felonious criminal acts were committed ... 0 points
>
> (2) All of the following apply to scoring offense variable 12:

(a) A felonious criminal act is contemporaneous if both of the following circumstances exist:

(*i*) The act occurred within 24 hours of the sentencing offense.

(*ii*) The act has not and will not result in a separate conviction.

The contemporaneous felonious criminal act must be distinct from the sentencing offense. *People v Light*, 290 Mich App 717, 723; 803 NW2d 720 (2010). Moreover, "only the number of underlying criminal *acts* is to be considered when scoring OV 12, not the number of *crimes* that may be charged from those acts." *People v Stoner*, 339 Mich App 429, 436; 984 NW2d 775 (2021). Employing this reasoning, we have held that when a defendant is convicted of unarmed robbery, other forms of larceny of which the defendant also could have been convicted may not be scored under OV 12. *Light*, 290 Mich App at 725-726. However, dismissed charges may constitute contemporaneous acts. *People v Billings*, 283 Mich App 538, 553; 770 NW2d 893 (2009).

In this case, defendant was properly assessed, at a minimum, 10 points under OV 12 for committing two contemporaneous felonious criminal acts against a person. MCL 777.42(1)(b). In particular, defendant committed an act of kidnapping and an additional act of CSC-III beyond the conduct of the attempted CSC-III conviction (oral/penile). Under MCL 750.349(1)(c), a person commits kidnapping "if he or she knowingly restrains another person with the intent to," among other things, "[e]ngage in criminal sexual penetration." Defendant threatened to have the victim imprisoned if he did not have sex with her. In addition, defendant hit the victim and blocked his escape with her body so he could not leave. Thus, defendant restrained the victim with intent to engage in CSC with him. See MCL 750.349(1)(c) and (2). Therefore, defendant committed a distinct "contemporaneous felonious criminal act[] . . . against a person" when she kidnapped the victim, notwithstanding that the kidnapping charge was dismissed as part of the plea agreement. See *Billings*, 283 Mich App at 553.

Further, defendant committed another "contemporaneous felonious criminal act[] . . . against a person," requiring an assessment of at least 10 points for OV 12, when she forced the victim to perform cunnilingus on her. See MCL 750.520d(1)(b) (providing that CSC-III occurs when a person uses "coercion" to engage in sexual penetration with another person).[3] Given the statements in the presentence investigation report, this was a second sexual penetration accomplished through coercion. See *Horton*, 345 Mich App at 616.

[3] "Coercion" includes "threatening to retaliate in the future against the victim." MCL 750.520b(1)(f)(*iii*).

Therefore, we affirm the trial court's scoring of, at a minimum, 10 points under OV 12 for two contemporaneous felonious criminal acts against a person, namely, kidnapping the victim and coercing him to perform cunnilingus. MCL 777.42(1)(b).[4]

IV. CONCLUSION

The trial court erred by scoring 15 points for OV 10 with the reasoning that defendant engaged in predatory conduct when she exploited the victim's parolee status. The trial court properly assigned, at a minimum, 10 points for OV 12 because defendant engaged in at least two contemporaneous felonious criminal acts against a person when she kidnapped the victim and coerced him to perform oral sex on her. Finally, as the prosecution concedes, the trial court should have assigned 10 points for OV 19.

We vacate defendant's sentence and remand to the trial court for resentencing consistent with this opinion. We do not retain jurisdiction.

/s/ Michael F. Gadola
/s/ Michael J. Riordan
/s/ Brock A. Swartzle

[4] The prosecution argues that 25 points should have been assessed for OV 12 because defendant also committed felonious assault, MCL 750.82(1), by threatening the victim with a knife, which constitutes a third felonious criminal act against a person. We decline to address this theory because it may be addressed in the first instance by the trial court on remand. See *Lampe*, 327 Mich App at 112.