

STATE OF MICHIGAN

MICHIGAN SUPREME COURT

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v.

Michigan Supreme Court
No. 162327

Court of Appeals
No. 346559

FRANK KING,

Macomb Circuit
No. 17-0895-FH

Defendant-Appellant.

PLAINTIFF-APPELLEE'S APPENDIX

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STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF MACOMB

PEOPLE OF THE STATE OF
MICHIGAN,

People,

vs.

Case No. 2017-895-FH

FRANK KING

Defendant.

/

SENTENCING,

BEFORE THE HONORABLE JOSEPH TOIA

MOUNT CLEMENS, MICHIGAN - THURSDAY, JUNE 21, 2018

APPEARANCES:

FOR THE PEOPLE: PATRICK JOSEPH COLETTA - P74148
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FOR THE DEFENDANT: FRANK KING - in pro per

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I N D E X

<u>WITNESS/PROCEEDINGS:</u>	<u>PAGE</u>
None offered	

E X H I B I T S

<u>NUMBER</u>	<u>IDENTIFICATION</u>	<u>ADMITTED</u>
None offered		

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June 21, 2018

Mount Clemens, Michigan

At about 9:22 a.m.

(REPORTER'S NOTE: "Inaudible" means a word or words were not heard well enough to be able to discern a proper interpretation either because of shuffling of papers, or the speaker did not amplify loud enough or was not picked up by a microphone.)

* * *

COURT CLERK: 2017-895-FH, People versus King.

MR. COLETTA: Patrick Coletta for the People,
your Honor.

MR. HADDAD: Good morning, your Honor.

My name is Mark Haddad, advisory counsel here
with Mr. King.

THE COURT: All right. Thank you.

Your name, sir.

MR. KING: Frank King, your Honor.

THE COURT: All right. Good morning, Mr. King.

Do you want to adjust that microphone for me, Mr.
Haddad?

All right, sir, today is the date set for

1 sentencing. Have you had enough time to review your
2 presentence report, as well as to meet with Mr. Haddad?

3 MR. KING: Yes, your Honor.

4 THE COURT: Are you ready for sentencing?

5 MR. KING: Yes, I am, your Honor.

6 THE COURT: All right. Thank you.

7 Mr. Coletta.

8 MR. COLETTA: Your Honor, I reviewed the
9 Presentence Investigation Report, and I had a chance to
10 look at the sentencing guidelines, Judge. The scoring on
11 them is different than the scoring that we had contemplated
12 when the defendant entered his plea. I think the reason
13 for that is Offense Variable number three was scored at 10
14 points. It was scored at five points while we were
15 contemplating the guidelines before this case started.
16 And, I think the reason that they were scored at 10 points
17 is because Mr. Kolton indicated that the paramedics took a
18 look at him on the day that this happened. However, based
19 on my recollection of the events and the injuries, they
20 mostly just checked him out to make sure he was okay and
21 didn't necessarily have to give him any treatment.

22 So, I think that five points is still the
23 appropriate scoring for Offense Variable Three, and if the
24 Court would be inclined to adjust that scoring, Judge, the
25 Offense Variable level would reduce from a two to a one,

1 and the guidelines would then be, 72 to 240, Judge.

2 THE COURT: And the total OV's would be five?

3 MR. COLETTA: The total OV's would be five. And
4 I think that's reflective of the incident itself.

5 THE COURT: All right. 72 to what?

6 MR. COLETTA: 240, your Honor.

7 And, I know that in the PSI, Mr. Kolton indicated
8 that he'd be in court for sentencing. I have not seen him
9 this morning. He's not in the courtroom right now.

10 THE COURT: Okay.

11 MR. HADDAD: And, in terms of that guideline
12 correction, your Honor, the defense stipulates. And we
13 appreciate Mr. Coletta's input there.

14 THE COURT: I'll go ahead, then. Based on the
15 stipulation, we'll go ahead and I'll amend OV3 to five
16 points. The total OV's will now be adjusted from 10 to
17 five. OV Level will go from two to one. Guideline range
18 will go from 72 to 240. And I'll adjust page two of the
19 report, as well, to reflect it.

20 MR. COLETTA: Thank you, Judge.

21 And, Judge, I know that Mr. Kolton was present in
22 court and testified when we began this trial. This was a
23 plea in the midst of a trial. And, the Court may recall
24 that Mr. Kolton was very pleased with the outcome of the
25 case, and he's indicated to me several times that sentence

6b

1 is what it is at this point.

2 If I had more words to give you on behalf of him,
3 I would certainly do it. I just know that he's -- he feels
4 that justice has been done in this case and he's grateful
5 that the right outcome has been achieved.

6 THE COURT: All right. I just want to, also,
7 just because this report will be going with Mr. King, I
8 want to -- if you would go to page two of the evaluation
9 plan, top of the page, the first two full paragraphs,
10 beginning with this investigation.

11 MR. COLETTA: Yes.

12 THE COURT: Go to the second line, it should be
13 72 to 240, then. And in the next paragraph, in the first
14 line it should be 72 to 240.

15 MR. COLETTA: Yes, your Honor. Thank you for
16 making those corrections.

17 THE COURT: All right. Mr. Haddad, I know you're
18 advisory counsel, anything to add on behalf of your client
19 or I'll hear from Mr. King directly?

20 MR. HADDAD: No, your Honor. At the time the
21 plea was taken, I know we spent a great deal of time with
22 the Court in chambers and on the record working out a Cobbs
23 Agreement. I'm very confident, based on this record and
24 these guidelines, that the Court will be able to sentence
25 within that Cobbs Agreement.

1 There's really nothing I can say I don't think
2 that would alter that. So, I would just not make any
3 comment at all.

4 THE COURT: All right. Mr. King, this is your
5 opportunity, sir. What would you like to say?

6 MR. KING: Well, I have nothing to say, your
7 Honor.

8 THE COURT: Okay. All right. Sir, it the
9 obligation of the Court, when imposing sentence, to
10 consider punishment, rehabilitation, the need to protect
11 society, to individualize sentencing, as well as to deter
12 similar offenses. The Court utilized the Presentence
13 Report as advisory, including the sentence recommendation,
14 the scoring of the guidelines. I made the appropriate
15 adjustments to the sentencing information report, which
16 outlines the guideline variables. So, those have been
17 stated on the record. We made the appropriate adjustments
18 to the sentencing guideline range.

19 So, it's the sentence of the Court, sir, that you
20 serve -- be sentenced to the Michigan Department of
21 Corrections for a period of 72 months to a term of 360
22 months. You get no credit because of your parole status at
23 the time of this offense. Your sentence will be
24 consecutive to any parole violation. You must not have
25 verbal, written or electronic contact or physical contact

1 with the victim in this case, Mr. Robert Kolton,
2 K-o-l-t-o-n. You're not to be within 500 feet of his
3 residence or place of employment.

4 You must pay \$68 in state costs, Crime Victim
5 Rights Assessment of \$130, court costs in the amount of
6 \$600 and repay court-appointed attorney fees, which is a
7 total of \$2,000. That would be \$575 for Attorney Teichman,
8 \$525 for Attorney Dennis, and \$900 for Attorney Haddad.

9 The Court is following the Cobbs Agreement that
10 was put on the record at the time of the plea.

11 MR. COLETTA: And Judge, I'm sorry to interrupt,
12 but before you move on to the Advice of Rights, part of
13 your Cobbs evaluation included that this sentence would be
14 concurrent with the sentence the defendant is serving on
15 his Wayne County case. I just want to make sure you're
16 incorporating that into your order.

17 MR. HADDAD: That's my understanding.

18 THE COURT: I looked at that. Wasn't he
19 sentenced on this? This preceded that case?

20 MR. HADDAD: This did, and he's currently serving
21 that sentence. Excuse me, Patrick.

22 MR. COLETTA: That's okay. This preceded that
23 incident. However, the sentence on the Wayne County case
24 preceded your sentence on this.

25 THE COURT: So, where do you have that, if it's

1 not on the form?

2 MR. COLETTA: Well, Judge, --

3 THE COURT: Or is it in the recommendation?

4 MR. COLETTA: I'll recant that. I did not look
5 at the defendant's criminal history in the PSI. It's just
6 through my communication with the assistant prosecutor in
7 Wayne County. He kept me posted on the status of his case
8 and made me aware when he was sentenced to the Department
9 of Corrections on the Wayne County case.

10 THE COURT: You know it's not on this plea sheet,
11 right?

12 MR. COLETTA: I'm sorry?

13 THE COURT: I don't see it on the plea sheet.

14 MR. HADDAD: I think the word concurrent is -- it
15 doesn't show because of the carbon.

16 MR. COLETTA: My file, my file indicates that it
17 would be concurrent with the Department of Corrections
18 sentence that he's serving in the Wayne County case. And I
19 think it would be done as a matter of course anyway.

20 MR. HADDAD: And that's correct, your Honor. On
21 the record, that's why we made it clear that it would be
22 consecutive to any subsequent violation. But we agreed
23 that it would be concurrent to the principal sentence he's
24 currently serving.

25 THE COURT: All right. I'll go ahead.

1 Consecutive to any parole violation, concurrent with any
2 current jail term --

3 MR. COLETTA: Thank you, Your Honor.

4 MR. HADDAD: Thank you very much.

5 THE COURT: -- with the Wayne County case. You
6 got a long history Mr. King.

7 MR. KING: I'm not proud of it, your Honor.

8 THE COURT: You need to stop taking from other
9 people.

10 MR. KING: I totally agree, your Honor. Thank
11 you.

12 THE COURT: You're entitled to an appellate
13 review of your conviction and sentence by way of an
14 application for leave to appeal to the Michigan Court of
15 Appeals. You're entitled to have an attorney represent
16 you. You have 42 days from today's date to request a court
17 appointed attorney if you're unable to afford your own. Do
18 you have the yellow copy of that form, sir?

19 MR. KING: Yes, I do, your Honor.

20 THE COURT: Is that your signature on the white
21 copy up there, sir?

22 MR. KING: It is.

23 THE COURT: You're all set.

24 MR. COLETTA: Thank you, your Honor.

25 MR. HADDAD: Thank you, your Honor.

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(At About 9:32 a.m., Proceedings Concluded.)

* * *

STATE OF MICHIGAN)

COUNTY OF MACOMB)

CERTIFICATE OF REPORTER

I, Elaine M. Maki, Certified Shorthand Reporter for the Circuit Court for the County of Macomb, do hereby certify that the foregoing pages one through 12, inclusive, comprise a true and correct transcript of the digitally recorded proceedings had In the Matter of People v. Frank King, Case No. 2017-895-FH, before Honorable Joseph Toia on June 21, 2018.

I further certify that I am not responsible for the accuracy of any copies of this transcript not made under my direction or control.

/s/ Elaine M. Maki

Elaine M. Maki, CSR, RPR
Certified Shorthand Reporter
Registered Professional Reporter

Mount Clemens, Michigan

May 12, 2021