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STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED November 16, 2026 12:40 PM
v	No. 377752 Ionia Circuit Court
JUSTIN CARNAZ HARDEN, Defendant-Appellant.	LC No. 2024-019074-FC

Before: O'BRIEN, P.J., and CAMERON and MALDONADO, JJ.

PER CURIAM.

Defendant appeals by leave granted[1] his sentence for his conviction of unauthorized possession of a cell phone by a prisoner under MCL 800.283a. We affirm.

I. BACKGROUND

In January 2024, while defendant was serving an 18-year sentence for unrelated convictions, corrections officers conducted a pat-down search of defendant. Defendant was not cooperative and during the search a cell phone fell out of defendant's pants in front of the officers. Defendant ignored the officers' instructions to turn over the cell phone, and instead retrieved the phone, put it in his pants, and tried to walk away. Additional correctional officers then had to be called to assist with gaining control of defendant and placing him in handcuffs. The officers were eventually able to retrieve the phone from defendant.

Defendant pleaded guilty to the offense of having a cell phone in prison without permission under MCL 800.283a. At the plea hearing, the trial court explained to defendant that it would take defendant's conduct during the time between his plea and sentencing into account when deciding

[1] *People v Harden*, unpublished order of the Court of Appeals, entered November 13, 2025 (Docket No. 377752).

his sentence. After his plea, defendant incurred a ticket for being outside of his cell while on sanction.

At sentencing, the trial court assessed 25 points for offense variable (OV) 19, which resulted in a minimum guidelines range of 14 to 36 months. Defendant took "full responsibility for the cellphone" but stated that his "intention was never to hurt nobody or escape . . . ." Instead, defendant just wanted to "talk to [his] family." However, the trial court noted that defendant made a conscious decision to seek out a cell phone that he knew he was not allowed to have and received a ticket after the court warned him that his conduct would be highly scrutinized for the purposes of sentencing. The court then imposed a sentence of 25 months to $7^1/_2$ years' imprisonment explaining that defendant received the ticket when he knew that being on his best behavior was of the utmost importance, had a significant criminal history, and emphasizing that an unauthorized cell phone "puts everybody at risk in the Department of Corrections."

Defendant moved to correct an invalid sentence, asserting that the trial court erred by assigning 25 points to OV 19 because defendant's conduct did not actually threaten the security of the penal institution. Defendant argued that the trial court should have assigned zero points for OV 19, which would have lowered the minimum sentencing guidelines range. At a hearing on the motion, the prosecution contended that the court properly assigned 25 points to OV 19 because defendant's use of the cell phone to contact a person outside the prison did threaten prison security. Specifically, the prosecution emphasized that defendant had been previously convicted of having contraband in prison and using drugs in prison; therefore, the unregulated communication via cell phone posed a threat because the communication was not monitored and there was no way to know who defendant was contacting with the phone or what he was contacting them about. The trial court agreed with the prosecution and denied defendant's motion, reasoning that there were "a handful of cases every year" of family members bringing contraband into the facility; therefore, the trial court believed that bringing an unregulated cell phone into the prison "does meet that requirement that there be conduct that actually threatened the security of the facility."

Defendant now appeals.

II. ANALYSIS

Defendant argues that the trial court erred by assessing 25 points for OV 19 because there was no evidence that his use of the contraband cell phone actually threatened the security of the penal institution. We disagree.

We review for clear error a trial court's factual determinations under the sentencing guidelines, and the trial court's findings must be supported by a preponderance of the evidence. *People v Hardy*, 494 Mich 430, 438; 835 NW2d 340 (2013), superseded in other part by statute as stated in *People v Rodriguez*, 327 Mich App 573, 579 n 3; 935 NW2d 51 (2019). A trial court commits a clear error when "the reviewing court is left with a definite and firm conviction that the trial court made a mistake." *People v Armstrong*, 490 Mich 281, 289; 806 NW2d 676 (2011). " 'Preponderance of the evidence' means such evidence as, when weighed with that opposed to it, has more convincing force and the greater probability of truth." *People v Cross*, 281 Mich App 737, 740; 760 NW2d 314 (2008) (citation omitted). Whether the trial court's findings are sufficient

under the guidelines is a question of statutory interpretation that we review de novo. *Hardy*, 494 Mich at 438.

MCL 800.283a provides that, "A prisoner shall not possess or use a cellular telephone or other wireless communication device in a correctional facility or on the grounds of a correctional facility except as authorized by the department of corrections." MCL 777.49(a) allows a trial court to assign 25 points to OV 19 when "[t]he offender by his or her conduct threatened the security of a penal institution or court[.]" To support a score of 25 points, "a court must find (1) that the defendant engaged in some conduct and (2) that conduct threatened the security of the prison." *People v Dixon*, 509 Mich 170, 177; 983 NW2d 385 (2022). If the defendant's conduct did not threaten the security of a penal institution, the trial court should assign zero points to OV 19. MCL 777.49(d).

On appeal, defendant argues that the trial court improperly assigned 25 points for OV 19 because mere possession of a cell phone does not demonstrate that defendant threatened the security of the prison, relying on *People v Dixon*, 509 Mich 170, 177; 983 NW3d 385 (2022). Defendant is correct that mere possession is not enough to justify 25 points for OV 19; however, in the present case, defendant not only possessed the cell phone, but he also admitted to using the phone to call someone outside the prison. And, although the Court in *Dixon* held that mere alleged possession was insufficient, the Court also expressed agreement with the list of the numerous ways a cell phone can be used for illicit and threatening purposes outlined in Justice VIVIANO'S dissent. *Id.* at 180-181. Notably, possession and use of an unauthorized phone allow inmates to "engage freely in unmonitored conversations with outside entities" and "[m]atters such as escape, assault (both staff and prisoner), and introduction of contraband may be freely discussed by a prisoner possessing and utilizing an unauthorized cellular telephone." *Id*. at 184 (VIVIANO, J., dissenting) (citation omitted). Accordingly, defendant's argument is not persuasive.

In *Dixon*, 509 Mich at 174-175, correctional officers found the defendant in the bathroom with a cell phone "nearby" and later discovered a cell phone charger in his shared cell. The defendant pleaded guilty to *attempted* possession of a cell phone, and the trial court assigned 25 points to OV 19. *Id.* at 175. The Michigan Supreme Court held that the trial court improperly assigned 25 points to OV 19 because there was no evidence that the defendant used or planned to use the phone, or that it was operable. *Id*. at 177-178. Further, there was no evidence that the defendant's mere alleged possession of a cell phone threatened the security of the prison. *Id.* at 181. The Court concluded that "[p]ossessing a cell phone in prison might justify a 25-point score for OV 19 because it threatens the security of the prison, but only if facts establish that the defendant's conduct, in fact, threatened the security of the institution," therefore, "[a] hypothetical threat isn't enough." *Id.* at 181-182. In sum, because the defendant in *Dixon* was only near a cellphone there was no evidence that the defendant engaged in conduct that threatened the security of the prison. *Id*. at 180.

Unlike *Dixon*, there is more than a preponderance of the evidence supporting the trial court's determination that defendant engaged in conduct that threatened the security of the prison. In the present case, defendant admitted that he possessed the phone, that the phone was operational, and that he used it to call someone outside the prison. Defendant claimed that he was only contacting his family members, but there was no way that this claim could be proven. Further, it does not matter who he was contacting because there is no way to know what defendant was

contacting his family about or for what purpose. It was also just as likely that defendant was contacting someone else for some other purpose, including purposes that threatened the security of the prison, like discussed earlier. Further, unlike *Dixon*, it was not hypothetical whether defendant possessed or used the cell phone to contact someone outside the prison; therefore, this case does not demonstrate a mere hypothetical threat, but rather a real threat. The Court in *Dixon* was clear that alleged possession of a cell phone was not, alone, enough to warrant points under OV 19, *id*. at 180, but, in this case, defendant's admitted possession and, more importantly, use, meets the standard.

Notably, in the present case, in addition to possessing the phone, defendant resisted correction officers' attempts to take the phone from him to the point that other officers had to be called over to restrain him, showing that his possession of a cell phone in this case actually led to a security threat. Defendant also had a previous conviction of attempting to possess contraband while in prison and received a ticket for failing to follow rules while on sanction between his plea and sentencing in this case. Accordingly, not only did defendant admittedly possess and use a prohibited cell phone, defendant's previous contraband conviction demonstrated a real failure to adhere to prison rules and regulations, which also threatens the security of the prison.

Accordingly, the trial court did not err when it assigned 25 points to OV 19 because a preponderance of the evidence supported the trial court's finding that defendant possessed and used the cell phone and that such conduct threatened the security of the prison especially considering defendant's history of noncompliance with prison rules and regulations.

Affirmed.

/s/ Colleen A. O'Brien
/s/ Thomas C. Cameron
/s/ Allie Greenleaf Maldonado