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STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED November 20, 2026 10:32 AM
v	No. 375791 Oakland Circuit Court
ROSIE MARIE SHACKELFORD, Defendant-Appellant.	LC No. 2021-279111-FC

Before: LIEVENSE, P.J., and SWARTZLE and MARIANI, JJ.

PER CURIAM.

Defendant pleaded no-contest to one count of first-degree child abuse, MCL 750.136b(2), and was sentenced to 7 to 30 years' imprisonment. Defendant appeals her sentence by leave granted,[1] contending that the sentencing court erred when it assessed 50 points for offense variable (OV) 7, MCL 777.37 (aggravated physical abuse), and 10 points for OV 10, MCL 777.40 (exploitation of a vulnerable victim). Because defendant waived any challenge to the OV scores at sentencing, we affirm.

I. BACKGROUND

On September 30, 2021, police were dispatched to Saint Joseph Mercy Hospital in response to a report of child abuse with respect to defendant's five-month-old infant, SB. SB was found to have numerous injuries: bilateral subdural hematomas in her brain; retinal hemorrhages in both eyes; burns to her chest and left hand, which were determined to be the result of a cigarette lighter being heated and then held to her skin; healing fractures to one of her ribs as well as one of her tibiae; cuts to her right ear and left hand; and three scratches on the bottom of her chin. Defendant was ultimately charged with one count of first-degree child abuse based on the injuries to SB's head and two counts of second-degree child abuse based on SB's burns and fracture injuries.

[1] *People v Shackelford*, unpublished order of Court of Appeals, issued October 6, 2025 (Docket No. 375791).

At the preliminary examination on the first-degree child abuse charge,[2] an expert in child abuse pediatrics testified that SB was so "critically ill" upon admission to the hospital that she would die without immediate medical intervention. According to the expert, the most "devastating injuries" SB suffered were those to her brain. The expert explained that SB's injuries indicated an "acceleration, deceleration in rotation of the head that's forceful," and were consistent with a severe car accident, whiplash-type injuries, or with SB being shaken. The expert opined that SB's injuries were the result of "non-accidental trauma."

An investigating officer also testified at the preliminary examination that, during interviews with law enforcement, defendant offered inconsistent explanations for SB's injuries. According to the officer, however, defendant took responsibility for the injuries, stated that she had been SB's sole caretaker for the week leading up to—and on the day of—SB's hospitalization, and denied that any of the other individuals she lived with at the time of SB's hospitalization (namely, her boyfriend, her boyfriend's father, and the father's significant other) harmed SB. Those individuals similarly denied involvement in inflicting SB's injuries. During cross-examination, defense counsel questioned the officer about text messages from defendant's phone, which had been seized during the investigation; according to defense counsel, those messages suggested defendant had been outside the home on the day SB was hospitalized and had left SB in her boyfriend's care, but counsel did not produce the messages themselves at the preliminary examination. The officer could not recall the messages' specific content but, based on his review of another officer's report, he testified that the messages appeared to indicate that the boyfriend "would have been with [SB] at some point" that day and that defendant was "inquiring as to the state of [SB] and what was going on with [SB]."

The district court bound defendant over on the first-degree child abuse charge. Thereafter, defendant pleaded no-contest to the first-degree child abuse charge in exchange for the dismissal of the second-degree child abuse charges. Defendant entered this plea pursuant to a *Cobbs*[3] agreement for "a sentence not to exceed the guidelines."

The presentence investigation report (PSIR) recommended a minimum sentencing guidelines range of 108 to 180 months' imprisonment based on a total OV score of 130 points and a total Prior Record Variable (PRV) score of 0 points. At the outset of defendant's sentencing hearing, however, the trial court stated for the record that it had "received information that the attorneys had an opportunity to get eyes on the calculated guidelines and there's an agreement as to what those guidelines should be, so I believe we're all in agreement that the guidelines are—the minimum is 81 to 135 [months]." The court asked, "Is that accurate?" The prosecution responded, "Yes," and defense counsel responded, "That is correct." The court then confirmed with defense counsel that she "had an opportunity . . . just in terms of additions, corrections, deletions, to review

[2] Initially, the only charges against defendant were those for second-degree child abuse. Defendant was bound over on those charges after she waived the preliminary examination. In June 2023, however, the prosecution added the first-degree child abuse charge. The circuit court, pursuant to a stipulation between the parties, remanded the case to the district court for a preliminary examination on the charge for first-degree child abuse.

[3] *People v Cobbs*, 443 Mich 276; 505 NW2d 208 (1993).

the [PSIR]." Defense counsel responded, "We have. Nothing other than the guidelines that have already been corrected." The prosecution also confirmed its review of the PSIR and that it had "no additions, deletions, or corrections," either.

As the trial court detailed at the hearing, this agreement was to score OV 3 at 25 points, OV 4 at zero points, OV 7 at 50 points, OV 10 at 10 points, OV 13 at zero points, and OV 19 at zero points. This served to retain the points scored in the PSIR for OVs 3, 7, and 10, while removing the points scored in the PSIR for OVs 4, 13, and 19—which, in turn, lowered the total OV score from 130 points to 85 points and the minimum guidelines range from 108 to 180 months' imprisonment to 81 to 135 months' imprisonment. The court, after hearing the parties' arguments as well as statements from SB's foster parents and defendant herself, sentenced defendant within the agreed-upon guidelines range to a term of 84 months to 30 years of imprisonment.

Defendant—represented by new counsel—subsequently moved to correct an invalid sentence, arguing that OVs 7 and 10 were improperly scored.[4] The prosecution, in response, noted that the parties had "reached [an] agreement about the scoring of the sentencing guidelines"—an agreement "which accrued to . . . defendant's benefit" and which included "defendant's attorney properly agree[ing] that OV 7 and OV 10 were correctly scored." And in any event, the prosecution argued, defendant's challenges to those OV scores lacked substantive merit. The trial court dispensed with oral argument and denied defendant's motion because (1) "the parties agreed to the scoring of the guidelines," and (2) "the guidelines were correctly scored."

This appeal followed.

II. WAIVER

On appeal, defendant contends, as she did in her post-sentencing motion below, that the trial court reversibly erred by scoring OV 7 and 50 points and OV 10 at 10 points, and that she is entitled to resentencing as a result. We disagree. As the trial court recognized in denying defendant's motion, defendant affirmatively agreed to those scores at sentencing, thereby waiving the ability to now challenge them on appeal.

As explained in *People v Carter*, 462 Mich 206, 215; 612 NW2d 144 (2000):

> Waiver has been defined as the intentional relinquishment or abandonment of a known right. It differs from forfeiture, which has been explained as the failure to make the timely assertion of a right. One who waives his rights under a rule may not then seek appellate review of a claimed deprivation of those rights, for his waiver has extinguished any error. [Quotation marks and citations omitted.]

[4] Defendant also filed a post-sentencing motion to withdraw her no-contest plea, arguing that her prior counsel had provided ineffective assistance. In that motion, defendant did not raise an ineffective-assistance claim with respect to the scoring of her sentencing variables. Whether the trial court has resolved defendant's motion to withdraw her plea is unclear from the record, and the motion is, in any event, not before us in the instant appeal.

Accordingly, "[w]hen defense counsel clearly expresses satisfaction with a trial court's decision, counsel's action will be deemed to constitute a waiver." *People v Kowalski*, 489 Mich 488, 503; 803 NW2d 200 (2011). See also *People v LaFountain*, 495 Mich 968, 970 (2014), quoting *People v Jones*, 468 Mich 345, 352 n 6; 662 NW2d 376 (2003) (" 'Appellate review is precluded because when a party invites the error, he waives his right to seek appellate review, and any error is extinguished.' ").

In the sentencing context, our jurisprudence has recognized that not all expressions of satisfaction with the scoring of the guidelines necessarily amount to a waiver of ability to challenge that scoring on appeal. See, e.g., *People v Hershey*, 303 Mich App 330, 351-354; 844 NW2d 127 (2013) (reviewing various circumstances in which waiver was not found). For instance, this Court has held that, when a defendant states at sentencing that he or she "d[oes] not have any additions or corrections" to the PSIR—a document which includes the scoring of sentencing variables—that alone does not evince the sort of "clear expression of satisfaction" needed to waive appellate review of a subsequent challenge to the scoring of those variables. *Id.*; see also *People v McChester*, 310 Mich App 354, 357; 873 NW2d 646 (2015) (concluding that the defendant did not waive his OV scoring challenge when his counsel indicated at sentencing that there were not "any '[a]dditions or corrections' to be made to the PSIR" and "[t]here was no other discussion with respect to the scoring of the variables") (first alteration in original). Nor does a defendant waive the ability to challenge the scoring of the guidelines simply by entering into a *Cobbs* agreement for a sentence "within the appropriate statutory sentencing guidelines range." *People v Price*, 477 Mich 1, 3 & n 1; 723 NW2d 201 (2006) (noting that the defendant "did not reach an agreement for a specific sentence" but instead "generally agreed to a sentence within the guidelines range however the trial court ultimately calculated it"). And when a defendant entered a *Cobbs* agreement for a sentence at the low end of the guidelines range and was then sentenced based on a range to which he had expressed agreement, this Court allowed him to later challenge that sentence upon realizing that the relied-upon range was, in fact, "significantly higher than the appropriate sentencing guidelines range" that had been scored in his sentencing information report. *People v Smith*, 319 Mich App 1, 8; 900 NW2d 108 (2017). As our Supreme Court has confirmed, however, a defendant waives appellate review of a claimed error in the scoring of a sentencing variable "by requesting the trial court to" score that variable as it did—thereby "invit[ing] the error" that the defendant seeks to challenge. *LaFountain*, 495 Mich at 970 (quotation marks and citation omitted) (vacating this Court's merits analysis of a variable's scoring in light of such a waiver).

The record in this case reflects that defendant affirmatively requested, and expressed clear satisfaction with, the OV scoring she received—including the scoring of OVs 7 and 10—such that her ability to challenge those scores on appeal is waived. *Id.*; *Hershey*, 303 Mich App at 351. Unlike *Hershey* and *McChester*, defendant, through counsel, did not merely indicate that she had no additions or corrections to the OVs as scored in her PSIR. Nor, unlike *Smith*, was this a matter of defendant or her counsel mistakenly believing the applicable guidelines range was far higher than had actually been scored for her. Instead, as discussed, OVs 7 and 10 were scored pursuant to an express, specific agreement that defendant reached with the prosecution, under which those two OVs (and certain others) would remain scored as they were in the PSIR while other OVs' PSIR scores would be reduced to zero—thereby lowering both defendant's total OV score (from 130 points to 85 points) and her recommended minimum guidelines range (from 108 to 180 months' imprisonment to 81 to 135 months' imprisonment). The sentencing court expressly

acknowledged and approved this agreement and its details on the record, and defense counsel twice confirmed the agreement. Having affirmatively requested and expressed clear satisfaction with the specific scoring of OVs 7 and 10—and thus having invited any error in that scoring—defendant has waived her right to challenge the trial court's scoring of those OVs on appeal. See *LaFountain*, 495 Mich at 970.

Affirmed.

/s/ Andrew J. Lievense
/s/ Brock A. Swartzle
/s/ Philip P. Mariani