

**STATE OF MICHIGAN
IN THE SUPREME COURT**

Appeal from the Michigan Court of Appeals

Judges Elizabeth L. Gleicher, Mark J. Cavanagh and Peter D. O'Connell

THE PEOPLE OF THE STATE OF MICHIGAN,

Supreme Court

Plaintiff-Appellee,

Docket No. 144762

v.

JOHNNY LEE WILLIAMS,

Defendant-Appellant.

Court of Appeals No. 299484; Wayne County Circuit Court No. 09-031564-FC

BRIEF ON APPEAL -- DEFENDANT-APPELLANT

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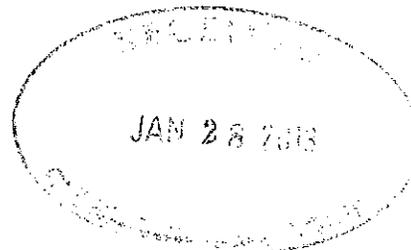


TABLE OF CONTENTS

Table of Contents	i
Index of Authorities	ii
Jurisdictional Statement	
Question Presented	
Statement of Facts	1
Argument	9
 THE TRIAL COURT'S ASSESSMENT OF TEN POINTS UNDER OV 19 [INTERFERENCE WITH ADMINISTRATION OF JUSTICE] WAS ERROR RESULTING IN A HIGHER GUIDELINES' RANGE THAN WAS SUPPORTED BY THE RECORD. FURTHER, THE COURT OF APPEALS' AFFIRMANCE OF THE SCORING WAS ERROR NECESSITATING REVERSAL	
Relief Requested	18

INDEX OF AUTHORITIES

Cases

<i>People v. Babcock</i> , 469 Mich. 247; 666 N.W. 2d 231 (2003)	9
<i>People v. Barbee</i> , 470 Mich. 283; 681 N.W. 2d 348 (2004)	passim
<i>People v. Cook</i> , 254 Mich. App. 635; 658 N.W. 2d 184 (2003)	10
<i>People v. Deline</i> , 254 Mich. App. 595; 658 N.W. 2d 164 (2003)	11, 12
<i>People v. Ericksen</i> , 288 Mich. App. 192; -- N.W. 2d -- (2010)	13, 14
<i>People v. Francisco</i> , 474 Mich. 82; 711 N.W. 2d 44 (2006)	9, 16, 17
<i>People v. Gajos</i> , unpublished opinion per curiam of the Court of Appeals, decided February 3, 2009 (Docket No. 281344)	12
<i>People v. Kimble</i> , 470 Mich. 305; 684 N.W. 2d 669 (2004)	9
<i>People v. Lefkovitz</i> , 294 Mich. 263; 293 N.W. 642 (1940)	13
<i>People v. Lucas</i> , 402 Mich. 302; 262 N.W. 2d 662 (1978)	13
<i>People v. Miles</i> , 454 Mich. 90; 559 N.W. 2d 299 (1997)	16
<i>People v. Morson</i> , 471 Mich. 248; 685 N.W. 2d 203 (2004)	9
<i>People v. Perry</i> , 460 Mich. 55; 594 N.W. 2d 477 (1999)	13
<i>People v. Smith</i> , 488 Mich. 193; 793 N.W. 2d 666 (2010)	9, 15
<i>People v. Spangler</i> , 480 Mich. 947; 741 N.W. 2d 25 (2007)	12

<i>People v. Vincent</i> , 94 Mich. App. 626; 288 N.W. 2d 670 (1980)	13
<i>Swartz v. Insogna</i> , ___ F. 3d ___ (2d. Cir. 2013), decided January 3, 2013 (Docket No. 11-2846-cv)	15
<i>Townsend v. Burke</i> , 334 U.S. 736; 68 S. Ct. 1252; 92 L. Ed. 2d 1690 (1948)	16
Statutes	
18 U.S.C. 4	13
MCL 750.505	13
MCL 750.545	13
MCL 777.49	11, 15, 16
MCL 777.61	17

JURISDICTIONAL STATEMENT

The case is before the Court on leave granted following a January 19, 2012, judgment of the Court of Appeals; the Court has jurisdiction pursuant to MCL 770.3(6) and MCR 7.301(a)(2).

QUESTION PRESENTED

DID THE TRIAL COURT CORRECTLY SCORE TEN POINTS UNDER OFFENSE VARIABLE 19 [INTERFERENCE WITH ADMINISTRATION OF JUSTICE]?

Defendant-Appellant answers: No.

Plaintiff-Appellee would answer: Yes.

The Court of Appeals answered: Yes.

STATEMENT OF FACTS

Background and sentencing.

Johnny Lee Williams was convicted of second-degree murder (as a lesser offense of the charged first-degree murder), MCL 750.317, and felony firearm, MCL 750.227b, following jury-trial in the Wayne County Circuit Court. He was sentenced by Circuit Court Judge Ulysses W. Boykin to consecutive prison terms of two years for the firearm conviction, and twenty-three to forty years for the murder conviction.

Judge Boykin determined Mr. Williams to be a B-III offender under the Sentencing Guidelines, which provided a range for the minimum term of 180 to 300 months, or life (a copy of the Sentencing Information Report ["SIR"] is included in the Appendix, p. 5a; a copy of the Presentence Investigation Report ["PSIR"] was previously filed in the Court of Appeals and is in the record; and see MCL 777.61, a copy of which is set-forth below on page 19).

Over defense objection, the trial court scored 5 points for Prior Record Variable ("PRV") 2 [prior low severity felony conviction], based upon a dismissed case Mr. Williams had in Texas, and also scored 10 points for Offense Variable ("OV") 19 [threat to security/interference with administration of justice], because Mr. Williams left the scene and did not turn himself in for about 15 days (Appendix, pp. 16a-21a). Without the contested 5 points for PRV 2, Mr. Williams would be a PRV level A, and without the contested 10 points for OV 19, Mr. Williams would be an OV level II, with a new range of 144 to 240 months on the A-II grid. Without just the 10

points scored for OV 19, Mr. Williams would fall within the sentencing grid-level at B-II, with a range for the minimum term of 162 to 270 months (*infra*, p. 17).

Mr. Williams appealed by right to the Court of Appeals, which, in an opinion of January 19, 2012, affirmed the convictions and sentences (*People v. Johnny Lee Williams*, unpublished opinion per curiam of the Court of Appeals, issued January 19, 2012 (Docket No. 299484)(Appendix, p. 6a). This Court granted leave to appeal October 24, 2012 (*People v. Johnny Lee Williams*, __ Mich. __; __ N.W. 2d __ (2012), (Appendix, p. 12a).

Trial testimony.

The case arose following the November 28, 2009, shooting death of Henry Moore inside the Satan's Sidekicks Motorcycle Club at 2000 Fenkell in Detroit. The defense was self-defense. Mr. Williams was tried with codefendant Tiffany Pritchett, who was charged with being an accessory after the fact; she was acquitted.

Dr. Lokman Sung, Assistant Medical Examiner, testified that Mr. Moore died from a single gunshot wound to the abdomen; there were no other injuries. There was no evidence of close-range firing; the wound track was left to right, and slightly downward (Appendix, pp. 22a, 23a). Moore had a tattoo of a gun on his body, along with the words "never was never will be nothing but an outlaw, 11-2-05" (*Id.*, at pp. 24a - 25a). The toxicology test result showed a blood alcohol level of .05 at the autopsy. Dr. Sung acknowledged that alcohol could break down, and that the BAL level may have been higher when Moore was shot. The shooting occurred about

seven hours and forty minutes before Moore died, and the autopsy took place about twenty-three hours after Moore died (*Id.*, at pp. 26a - 28a).

Clothilda Jones testified that she was a member of the Motorcycle club and worked in the kitchen every Thursday and Friday. She knew Mr. Williams, knew Ms. Pritchett, whom she knew as "Flame", and knew Mr. Moore, whom she knew as "Shovelhead Red," or "Red". She had a closer relationship with Moore than with Williams (*Id.*, at pp. 29a, 30a, 31a, 32a).

November 28, 2009, was a friends-and-family-day at the club. At about 10:00 p.m. she heard a "ruckus, like a confrontation" and people fussing. She did not recognize the voices. She ran to the area of the office and saw Flame, Red and another club brother, "Knock Out." Mr. Williams was nearby in the hallway and seemed upset. Ms. Jones heard him say, "pull your gun, nigger" (*Id.*, at pp. 32a; 33a; 34a). Jones said she went into the office and saw Red/Moore trying to go towards the door. Red was restrained by Knock Out and Flame. Jones said she told Williams that Red did not have a gun, then Jones went back to the kitchen and things calmed down (*Id.*, at pp. 36a; 37a).

About one or two hours later, Jones was in the kitchen and heard a gunshot. She said she ran out of the kitchen towards the office and Mr. Moore fell at, or on, her feet. She did not see Mr. Williams. Everybody was rushing around. She did not do anything to help Red; someone said not to touch him (*Id.*, at pp. 36a; 38a-39a).

Jones said she had seen Red/Mr. Moore with a handgun that night, but that Knock Out had

taken it from him and hidden it in the kitchen; it was later given to Jones' significant other, Francisco Calderin. She said she was present when Red earlier asked Calderin to get his gun back from Knock Out; Calderin had hidden the gun in the kitchen, Jones said. She never saw Mr. Williams with a gun that night (*Id.*, at pp. 35a; 37a; 39a; 40a; 36a; 38a).

Ms. Jones admitted that she left before the police arrived, saying she went to the hospital. She did not make herself available to police until shortly before trial. Although the room was crowded at the time of the shot, she could not name even one person who was present (*Id.*, at pp. 42a - 43a; 44a - 45a).

Mr. Calderin testified that when he arrived at the club that night he saw that Red/Mr. Moore was very upset. Moore said someone had taken his gun (*Id.*, at 46a - 48a). Calderin said that later Knock Out gave him Red's gun and Calderin took it to the kitchen and hid it (*Id.*, at 49a - 50a). During the night, Calderin said, Red walked around the club pulling up his shirt and, "talking to anybody who would have heard him," saying " I don't have a gun, I don't have anything." About one or two hours after Calderin arrived at the club he heard a gunshot (*Id.*, at pp. 51a; 53a - 58a). He ran out of the kitchen and saw Red fall down. Calderin said he asked Red what happened, and Red said "Tray shot me." He said he heard Williams say, "I told you I'd shoot you" (*Id.*, at pp. 52a; 54a; 53a).

Calderin said he ran to the kitchen to get the gun to shoot Mr. Williams, but was restrained by club members. Everybody ran out of the club, and "[t]hey said that everybody had to leave, so everyone left" before the police arrived (*Id.*, at pp. 55a - 56a).

Kenief Lynch testified that he was a club member, and was the master sergeant at arms, providing security for the club. He knew Williams, who was the first sergeant at arms assisting with security at the club, and knew Moore, "Shovelhead Red" or "red," who was also a club brother; Lynch had no problems with either man (*Id.*, at pp. 59a; 60a; 61a).

At about 11:00 p.m. he was in the office with Flame and Red sitting around and joking. Red closed and locked the door and joked that Williams would come in; soon, Williams, who had a key, entered. Red said something to Williams, the two exchanged words, and both men, Lynch said, became agitated. As Williams was leaving the office Red said something to him, Mr. Williams came back and threw two punches at Red. Lynch said he jumped between the men. Lynch then closed the door, and only he and Red were then in the office. He calmed Red down after five or ten minutes, then hugged him and noticed that Red had a gun; Lynch said Red handed him the gun and said "take my gun; I don't want to kill this nigger" (*Id.*, at pp. 62a - 66a). Later, Lynch testified, he saw Red and Calderin outside, and he gave Red's gun to Calderin, but told Calderin not to give it to Red (*Id.*, at 67a; 77a - 78a).

Later still, Lynch heard a commotion in the pool table area, he could hear yelling, and he heard Moore's and Williams' voices. Lynch said Red was hollering and Williams moved toward Red while reaching for his waist; Lynch grabbed Williams' arm and Flame stepped between Williams and Red. Lynch said Williams got his hand free, pulled out his .40 pistol, reached over Flame and fired one shot. Lynch said that although he did not get a good look at Red, he knew that Red did not have a weapon (*Id.*, at pp. 68a - 72a).

Lynch said he then saw Williams outside, and another club member, "Narco," had to be restrained from getting to Williams (*Id.*, at pp. 73a - 74a). There was a concern that Narco would harm Mr. Williams (*Id.* at 75a - 76a).

Ms. Pritchett testified. She said she had been a member of the club for fourteen years, and that the club was like a big family. She had known Moore for about four or five years, and said that when Moore was drinking he was disrespectful and unruly. Williams was her fiancé (*Id.*, at pp. 79a - 80a).

She and Mr. Williams arrived at the club that night between 10:00 p.m. and 11:00 p.m. She went into the office, then Knock Out came in, and then Red -- who was drunk -- also came into the office. Red said disrespectful things about what he would do to her body, but she "pretty much" ignored him. Mr. Williams came into the office and Red said some things to him; Red raised up from the desk and Williams then hit him once (*Id.*, at pp. 81a - 82a; 83a).

Pritchett jumped up, grabbed Williams and led him out of the office; she could then see that Red "went reaching" for, and then pulled out, a black gun, but Knock Out pulled Red away and closed the office door. Red came out of the office about ten minutes later; he still seemed angry and said, "Oh, it ain't over. You gonna get yours. It's not over" (*Id.*, at pp. 84a - 85a; 86a - 87a). Mr. Williams seemed afraid of Red's threats (*Id.*, at p. 88a).

Later, Red came over to where Pritchett and Williams were standing and said, "I told you you gonna get yours. I'm going to get you." Red then "went reaching," Pritchett jumped between the

two men, and Williams fired one shot (*Id.*, at pp. 89a - 91a).

Mr. Williams testified that he was thirty years old, had been in the Army for four years, was a journeyman electrician, and was a 1st-Sergeant -- essentially security -- at the club. It was encouraged for members to carry guns; there was a motto at the club, "I am my brother's keeper." Also, there were guns around the premises (*Id.*, at pp. 92a - 95a).

The gun that Red had that night had been personally given to him by Mr. Williams on an earlier occasion. Williams had witnessed three prior incidents involving Moore - either drunk and/or 'getting into it' with someone -- where Mr. Moore had retrieved a gun and fired it (*Id.*, at pp. 96a - 98a).

On November 28, 2009, Moore was on probation to the club, having lost his full membership, and was not allowed into the office (*Id.*, at p. 94a). Moore was intoxicated. At about 11:00 p.m., Williams went to the office to ask Moore to step out of the office, but Moore slammed and locked the door. Mr. Williams, who had a key, unlocked the door and again asked Moore to leave the office. Moore jumped off the desk towards Williams, and Williams hit him one time, knocking Moore back onto the desk. Williams said "Red's reaction was horrendous," and Red reached for and grabbed a gun, and pointed it in Williams' face. Knock Out, who was in the office, grabbed Red. Another club member took Williams out by the pool table. Williams could see that Red, who was still trying to get out of the office, put his gun back in his waist area (*Id.*, at pp. 99a - 101a).

Later, Red arrived at the pool table area, after several times previously being moved from there, and reached for his gun. Mr. Williams could clearly see the gun and had no doubt that Red actually had a gun. Williams took a step back, moved Pritchett -- who was between him and Moore -- and fired one shot from his waist. It all happened "real fast, " and there was no time to leave through an exit. Mr. Williams said he was "scared unbelievably" (*Id.*, at pp. 102a - 103a; 104a).

A club member, Narco, then ran up on Mr. Williams, who was forced out of the club by Narco's aggressiveness. Mr. Williams planned to wait for police outside, but Narco charged out of the front door, so Mr. Williams ran away as Knock Out and 'Swiftly' restrained Narco. Narco broke free from those restraining him, and Mr. Williams then saw Pritchett's van, jumped in, and told her to pull off; he jumped out some blocks away (*Id.*, at pp. 105a - 106a). Mr. Williams then got a ride from a cousin. He planned to go to the police, but his cousin told him he needed a lawyer. Mr. Williams subsequently obtained a lawyer and turned himself in fifteen days later, on December 13th (*Id.*, at pp. 107a - 108a).

Mr. Williams was convicted, sentenced, and appealed as described above.

ARGUMENT

THE TRIAL COURT'S ASSESSMENT OF TEN POINTS UNDER OV 19 [INTERFERENCE WITH ADMINISTRATION OF JUSTICE] WAS ERROR RESULTING IN A HIGHER GUIDELINES' RANGE THAN WAS SUPPORTED BY THE RECORD. FURTHER, THE COURT OF APPEALS' AFFIRMANCE OF THE SCORING WAS ERROR NECESSITATING REVERSAL.

Standard of Review and Preservation of Issue

A trial court's sentencing decision is normally reviewed for an **abuse of discretion**; however, questions of law and of statutory interpretation are reviewed **de novo**. See *People v. Smith*, 488 Mich. 193, 198; 793 N.W. 2d 666 (2010); *People v. Barbee*, 470 Mich. 283, 285; 681 N.W. 2d 348 (2004); *People v. Kimble*, 470 Mich. 305, 308-309; 684 N.W. 2d 669 (2004); *People v. Babcock*, 469 Mich. 247, 253; 666 N.W. 2d 231 (2003); *People v. Francisco*, 474 Mich. 82, 85; 711 N.W. 2d 44 (2006); *People v. Morson*, 471 Mich. 248, 255; 685 N.W. 2d 203 (2004).

Counsel timely objected at sentencing (Appendix, p. 17a). The issue was subsequently raised in the appeal of right to the Court of Appeals (*Id.*, at p. 6a).

Analysis

'He should have called first.' With only some exaggeration, that phrase might suggest where the argument advanced by the prosecution -- and adopted by the trial court at sentencing as a basis for scoring Offense Variable 19 -- might end. That is, the argument that Mr. Williams' failure to remain at the scene and/or to immediately turn himself in -- something he was not obligated to do -- and his instead waiting about two weeks, during which he attempted to secure

defense counsel -- something he had a right to do -- should be scorable as an interference with the administration of justice, reasonably could lead to the burden upon one about to commit a potential criminal offense of calling and alerting law enforcement before any questionable activity occurred, lest the person be accused of -- and later penalized at sentencing for -- interfering with the administration of justice.

One might ask, what of the perpetrator's activities done in preparation for commission of a crime? For example, what if the perpetrator dons gloves, or a mask before committing the transgression? Should there be a subsequent scoring of OV 19 for an interference with the administration of justice? What if the perpetrator is subsequently apprehended and, during interrogation, exercises his right to remain silent? or demands counsel? or wants to negotiate a deal with the prosecution before cooperating?

In the event a perpetrator does not remain at the scene -- which, incidentally, there is no legal obligation to do (excluding, for example, the various statutory requirements relating to motor vehicles and accidents) -- and, instead, leaves before the arrival of police, there has been no affirmative interference with police or the criminal justice system. In such a case, there is no disregard of an order from an officer performing an investigative duty to which one might ascribe interference (Contrast the facts in the case of *People v. Cook*, 254 Mich. App. 635, 637, 638; 658 N.W. 2d 184 (2003), for example, wherein the defendant was involved in a high-speed chase and disregarded the police sirens and emergency lights; further, the defendant ran red lights and drove recklessly. The defendant conceded that he interfered with the administration of

justice, and challenged only whether or not OV 19 could be scored in a related assault conviction). Notably, in this case, the 100 or so people present were told to leave before the police arrived (testimony of Calderin, Appendix, p. 57a); also, Calderin ran to the kitchen to get a gun to shoot Mr. Williams (*Id.*, at pp. 55a - 56a). Mr. Williams had little reasonable choice but to leave. Could it reasonably be said he had an option to stay under those circumstances, in order that he might sit and wait for an officer to arrive, so that he could report what had happened?

In *People v. Deline*, 254 Mich. App. 595, 597-598; 658 N.W. 2d 164 (2003), vacated in part 470 Mich. 895; 683 N.W. 2d 669 (2004), the Court of Appeals found that “interference with” the administration of justice is equivalent to “obstruction of” justice, and was limited to an effort to undermine or subvert the judicial process. *Id.* at 597-598. That analysis of MCL 777.49 was subsequently disapproved by this Court, which also vacated the opinion to the extent it was inconsistent with the decision in *Barbee*. 470 Mich. 895. In *Deline*, the defendant attempted to evade an OUIL charge by trading seats with a passenger. The Court of Appeals, holding that the behavior was not “aimed at undermining the judicial process” where the defendant attempted to evade the charge. The Court also noted:

“If we were to conclude that this evasive and noncooperative behavior justified the imposition of points under OV 19, that variable would apply in almost every criminal case. Defendants almost always seek to hide their criminal behavior and rarely step forward to offer evidence proving their guilt.” *Deline*, 254 Mich. App. at 297-298.

The *Barbee* decision clarified that an interference or attempt to interfere with the administration of justice was not limited to the judicial process; the Court further noted that law

enforcement officers "are an integral component in the administration of justice" and that "investigation of crime is critical to the administration of justice" therefore, providing a false name to police constitutes interference with the administration of justice. *Barbee*, 470 Mich. at 288.

Barbee did not expand the definition of interference to cover the basic efforts of criminals to avoid detection, which would effectively mandate automatic scoring of the variable for almost all offenders. See, for example, Justice Markman's dissent in *People v. Spangler*, 480 Mich. 947, 948; 741 N.W. 2d 25 (2007), "[g]iven that it would be extraordinary for a criminal perpetrator not to attempt to hide evidence of his or her crime or to make such crime less detectable, it would seem that OV 19 would almost always be scored under the trial court's interpretation;" see, also, *Deline, supra*, 254 Mich. App. at 297-298 ("that variable would apply in almost every criminal case. Defendants almost always seek to hide their criminal behavior and rarely step forward to offer evidence proving their guilt.") See, also, the reasoned and common-sense language in the case of *People v. Gajos*, unpublished opinion per curiam of the Court of Appeals, decided February 3, 2009 (Docket No. 281344)("If merely attempting to evade discovery or capture constituted interference with the administration of justice, OV 19 would have to be scored for virtually every criminal conviction. In this case, the alternative to running away upon sighting the police would have been to stand still and await capture. We do not deem such uncharacteristic submission and surrender necessary to avoid a penalty for interfering with the administration of justice")(Appendix, p. 14a).

Common-sense and precedent fail to establish any duty -- the breach of which would necessitate scoring of the variable -- on the part of an offender, for unspecified, speculative, inchoate future activities of law enforcement officers who may, or may not, experience nothing more than inconvenience in an investigation. Instead, common-sense and precedent recognize that there are consequences in the criminal justice system for an offender where something is done specifically designed or intended to frustrate or obstruct an investigation, e.g., *People v. Ericksen*, 288 Mich. App. 192; -- N.W. 2d -- (2010), lv den __ Mich. __ ; __ N.W. 2d __ (2011), decided March 8, 2011 (Docket No. 141089); *Barbee*, 470 Mich. at 288 (providing false name to an officer investigating a possible violation); and the possibility of being charged with the common-law offense of accessory after the fact, *People v. Lucas*, 402 Mich. 302, 304; 262 N.W. 2d 662 (1978); *People v. Perry*, 460 Mich. 55; 594 N.W. 2d 477 (1999); MCL 750.505. Unlike the federal system, in 18 U.S.C. §4, Michigan does not have a specific offense of misprision of a felony [there is a misprision of treason, MCL 750.545], *People v. Lefkovitz*, 294 Mich. 263, 268, 269, 270; 293 N.W. 642 (1940)("There is not now and never has been such a substantive crime in the State of Michigan," and noting that the "concealment" of a felony required to be common-law misprision of a felony, required "something more than mere silence or failure to disclose, unless such, in purpose, is in aid of an offender and of such nature as to constitute one an accessory after the fact," and, ultimately, that, "In modern criminal law mere nondisclosure of knowledge of crime committed by another is not misprision of felony nor any substantive crime"); *People v. Vincent*, 94 Mich. App. 626, 635; 288 N.W. 2d 670 (1980)(KAUFMAN, J., dissenting: "not only is misprision of a felony not a crime in Michigan but that Michigan has

gone a step further and abolished aider and abettor status for accessories after the fact"). Where a person is not required to report the crime of another, this Court should not conclude that the person is required to report their own crime.

In *Ericksen*, the defendant argued that his conduct of leaving the scene of his crime, and then leaving the state, did not amount to interference with the administration of justice to warrant scoring the variable. However, the defendant had also wiped down the knife, asked a companion to dispose of it, and asked people to lie about his whereabouts on the night of the crime. The Court of Appeals held:

"there was evidence that defendant asked one of his companions to dispose of the knife he used to stab the victim and asked others to lie about his whereabouts during the night of the crime. Clearly, defendant's attempt to hide or dispose of the weapon in conjunction with his encouragement of others to lie about where he was at the time of the stabbing was a multifaceted attempt to create a false alibi and mislead police. His actions ultimately constituted fabrications that were self-serving attempts at deception obviously aimed at leading police investigators astray or even diverting suspicion onto others and away from him."

Such extra factors as found in *Ericksen* are not present in the instant case.

Barbee also did not mandate that criminals immediately turn themselves in. The decision instead included police activities within the statutory definition; thus, once police begin investigative activities a offender may not, without suffering the later consequence of OV 19 scoring, impede, deceive, or disobey lawful orders of officers engaged in legitimate

investigations. E.g., *Barbee, supra*, 470 Mich. at 281.

The principle that government has legitimate interest in preventing and investigating crime is long-standing. Citizens have a duty not to break the law. But does the breaking of a criminal law automatically interfere with the administration of justice, where the offense makes work for law enforcement and, possibly, later the courts? This Court provided some guidance in *Smith, supra*, by stating that "administration of justice" process, including the "actual judicial process," is not commenced until an underlying crime has occurred, which invokes the process." 488 Mich. at 202. It would appear that MCL 777.49 requires something more than the mere commission of a crime; that is, some direct and intended interference with an investigation into a specific offense is necessary before OV 19 may be properly scored.

Otherwise, one might conclude that any behavior, even otherwise lawful or constitutionally protected behavior, that inconveniences, distracts an officer, or draws an officer's attention, might be considered, generally, as an interference with the administration of justice. Where would one place 'simple' harassment of an officer, such as taunting, or even where a person makes an obscene gesture at a police officer otherwise not engaged in any specific investigation, but distracting the officer from general law-enforcement duties? (See, for example, *Swartz v. Insogna*, ___ F. 3d ___ (2d. Cir. 2013), decided January 3, 2013 (Docket No. 11-2846-cv), a civil case stemming from a disorderly conduct arrest after Swartz was arrested for "giving the finger" [a practice, incidentally, according to the court, going back to Ancient Greece, and the first photographic recorded use in the U.S. was in an 1886 photograph of the Boston Beaneaters and

the New York Giants baseball teams] to an officer in a speed-trap monitoring traffic for speeders, and, presumably, Swartz's act prompted the officer to effectuate an illegal traffic stop and subsequent arrest, and cease his traffic-radar duties)(another example may be found in the Internet on YouTube, <http://www.youtube.com/watch?v=ojIz5Mai2Rw>, where a radio-controlled, camera-equipped flying 'quadcopter'/drone in France follows a police car for several minutes, until, ostensibly, the officer tires of it and stops the police car; would that be considered interference with the administration of justice?).

Nothing in the language of MCL 777.49 requires that a defendant assist the police in his own capture, or to otherwise aid in his ultimate conviction.

Due Process requires that a defendant be sentenced only on accurate information. *Townsend v. Burke*, 334 U.S. 736; 68 S. Ct. 1252; 92 L. Ed. 2d 1690 (1948). Where a trial court sentences a defendant under erroneously scored variables which affects the guidelines' range, resentencing is required. *Francisco, supra*, 474 Mich. at 88, 89-91:

"we have held that "a sentence is invalid if it is based on inaccurate information. "*People v. Miles*, 454 Mich. 90, 96, 559 N. W. 2d 299 (1997). In this case, there was a scoring error, the scoring error altered the appropriate guidelines range, and defendant preserved the issue at sentencing. It would be in derogation of the law, and fundamentally unfair, to deny a defendant in the instant circumstance the opportunity to be resentenced on the basis of accurate information. A defendant is entitled to be sentenced in accord with the law, and is entitled to be sentenced by a judge who is acting in conformity with such law." (footnotes omitted).

Without the ten points scored in OV 19, Mr. Williams would fall within the B-II grid, with a range of months of 162 to 270. MCL 777.61:

777.61 Minimum sentence ranges for class M2.

Sec. 61.

The following are the minimum sentence ranges for class M2:

PRIOR RECORD VARIABLE LEVEL

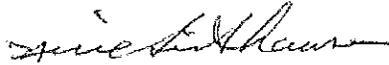
Offense Variable Level	A	B	C	D	E	F
I						
0-49 points	90-150	144-240	162-270	180-300	225-375	270-450
				or life	or life	or life
II						
50-99 points	144-240	162-270	180-300	225-375	270-450	315-525
			or life	or life	or life	or life
III						
100+ points	162-270	180-300	225-375	270-450	315-525	365-600
	or life					

The trial court erroneously scored OV 19, with the result that Mr. Williams was sentenced in the wrong grid. Resentencing is required. *Francisco, supra*, 88, 90-91, 92.

JUDGMENT APPEALED FROM AND RELIEF SOUGHT

WHEREFORE, for the foregoing reasons, Defendant-Appellant Johnny Lee Williams respectfully requests this Honorable Court reverse the decision of the Court of Appeals and order a re-sentencing within correctly-scored guidelines.

Respectfully submitted,



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