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# **APPENDIX A**

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DEMETRIUS TROY BRADLEY,

Defendant-Appellant.

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UNPUBLISHED

January 20, 2022

No. 355549

Wayne Circuit Court

LC No. 15-000373-01-FC

Before: GADOLA, P.J., and MARKEY and MURRAY, JJ.

PER CURIAM.

Defendant appeals by delayed leave granted<sup>1</sup> the order denying his motion for relief from judgment.<sup>2</sup> Defendant was charged with first-degree premeditated murder, MCL 750.316; assault with intent to commit murder, MCL 750.83; felon in possession of a firearm (felon-in-possession), MCL 750.224f; and possession of a firearm during the commission of a felony (felony-firearm), MCL 750.227b. His first trial was declared a mistrial when the jury was unable to reach a verdict. On retrial, defendant was acquitted of first-degree murder and the lesser included offense of second-degree murder, MCL 750.317, but was convicted of assault with intent to murder, felony-firearm, and felon-in-possession. Defendant was sentenced as a second-offense habitual offender, MCL 769.10, to concurrent prison terms of 35 to 55 years for the assault conviction, and one to five years for the felon-in-possession conviction, to be served consecutively to a two-year term of imprisonment for the felony-firearm conviction.

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<sup>1</sup> *People v Bradley*, unpublished order of the Court of Appeals, entered March 29, 2021 (Docket No. 355549).

<sup>2</sup> There are three prior related appeals originating from the same trial court case number.

On appeal, defendant argues the trial court erred when it assigned 100 points to Offense Variable (OV) 3, MCL 777.33, because the trial court improperly considered defendant's acquitted conduct when it scored OV 3. We affirm.

## I. BACKGROUND

The factual background of this case was explained in the opinion addressing defendant's initial appeal to this Court:

On December 18, 2014, Larnell Fleming and his friend, John Petty, were driving to a nightclub in Fleming's van when another vehicle began following them. The front seat passenger in the other vehicle leaned out the window and began firing a gun at the van. Fleming sped away with the other vehicle in pursuit. Fleming lost control of his van and crashed into another car. Fleming survived, but Petty was ejected from the van and died from internal injuries. Fleming identified defendant as the shooter, and at the time of defendant's arrest, an explosives-detection dog alerted on the coat that he had been wearing, indicating the presence of "some sort of explosive residue" on the coat. In a recorded police interview, defendant initially denied having been in the car. Later in the interview, defendant admitted that he was in the car but asserted that he was in the back seat and did not fire any shots. [*People v Bradley*, unpublished per curiam opinion of the Court of Appeals, issued August 15, 2017 (Docket No. 331146), p 1.]

After defendant was sentenced, he appealed his judgment of sentence, arguing he received ineffective assistance of counsel, and the trial court improperly assessed several OVs, including OV 3, and admitted inadmissible evidence. This Court affirmed defendant's convictions. *Bradley*, unpub op at 6. After this Court's decision, defendant moved, in the trial court, for relief from judgment. The trial court denied defendant's motion, and he sought leave to appeal with this Court, but the application was denied. *People v Bradley*, unpublished order of the Court of Appeals, entered April 17, 2020 (Docket No. 352376). Defendant's application for leave to appeal was likewise denied by the Supreme Court. *People v Bradley*, 506 Mich 962; 950 NW2d 724 (2020). After *People v Beck*, 504 Mich 605; 939 NW2d 213 (2019), was decided, defendant again moved for relief from judgment, arguing *Beck* applied and the trial court's assessment of points for OV 3 was contrary to *Beck*. Defendant was denied relief in the trial court.

## II. STANDARD OF REVIEW

This Court "review[s] de novo the trial court's interpretation of the statutory sentencing guidelines." *People v Dumback*, 330 Mich App 631, 637; 950 NW2d 493 (2019), citing *People v Babcock*, 469 Mich 247, 253; 666 NW2d 231 (2003). Construction of the sentencing guidelines requires this Court to apply rules of statutory interpretation. *People v Savage*, 327 Mich App 604, 617; 935 NW2d 69 (2019). "[This Court's] goal in interpreting a statute is to ascertain and give effect to the intent of the Legislature . . . . If the statute's language is clear and unambiguous, we assume that the Legislature intended its plain meaning and we enforce the statute as written." *Dumback*, 330 Mich App at 637, quoting *People v Hardy*, 494 Mich 430, 439; 835 NW2d 340 (2013).

This Court reviews for clear error the trial court’s factual determinations at sentencing and “review[s] de novo whether the factual determinations were sufficient to assess points under [an] OV.” *People v Schrauben*, 314 Mich App 181, 196; 886 NW2d 173 (2016); see also *People v Bailey*, 330 Mich App 41, 60; 944 NW2d 370 (2019). “Clear error exists when the reviewing court is left with a definite and firm conviction that a mistake was made.” *People v Blevins*, 314 Mich App 339, 348-349; 886 NW2d 456 (2016). In addition, “[t]he retroactivity of a court’s ruling presents an issue of law that [this Court] reviews de novo.” *People v Maxson*, 482 Mich 385, 387; 759 NW2d 817 (2008).

### III. DISCUSSION

Defendant contends the trial court erred in assessing 100 points for OV 3, as it was based upon a finding that Petty was killed as a result of a chain of events initiated by defendant.

“Offense variables are properly scored by reference only to the sentencing offense except when the language of a particular offense variable statute specifically provides otherwise.” *People v McGraw*, 484 Mich 120, 135; 771 NW2d 655 (2009). OV 3 concerns physical injury to a victim. MCL 777.33(1). In assessing points for OV 3, a trial court must analyze the circumstances of the case and assign the highest point value that applies to a defendant’s situation. *People v Houston*, 473 Mich 399, 401; 702 NW2d 530 (2005); MCL 777.33(1). MCL 777.33 provides for the assessment of points:

(1) Offense variable 3 is physical injury to a victim. Score offense variable 3 by determining which of the following subdivisions apply and by assigning the number of points attributable to the applicable subdivision that has the highest number of points:

(a) A victim was killed 100 points.

\* \* \*

(2) All of the following apply to scoring offense variable 3:

\* \* \*

(b) Score 100 points if death results from the commission of a crime and homicide is not the sentencing offense. [MCL 777.33(1)(a); MCL 777.33(2)(b).]

Defendant argues that under *Beck*, 504 Mich at 626, the trial court’s assessment of points for OV 3 was in error. Although the trial court appeared to assume, without deciding, that *Beck* applied to this case, it does not. It is true that *Beck*, “is to be applied retroactively to all cases, state or federal, pending on direct review or not yet final.” *People v Beesley*, \_\_\_ Mich App \_\_\_, \_\_\_; \_\_\_ NW2d \_\_\_ (2021) (Docket No. 348921); slip op at 7 n 4. However, defendant was sentenced on December 4, 2015, and his sentence was affirmed by this Court on August 15, 2017, which was before *Beck* was decided. *Bradley*, unpub op at 6. Moreover, defendant challenged the trial court’s assessment of OV 3 in that direct appeal. Since this case was final before *Beck* was decided, *Beck* cannot be retroactively applied in this instance. *Beesley*, \_\_\_ Mich App at \_\_\_; slip op at 7 n 4.

Even if *Beck* applied retroactively, the trial court properly considered defendant's conduct underlying the assault with intent to murder, felon-in-possession, and felony-firearm charges, not the acquitted conduct. Under *Beck*, "when a jury has specifically determined that the prosecution has not proven beyond a reasonable doubt, that a defendant engaged in certain conduct, the defendant continues to be presumed innocent." *Beck*, 504 Mich at 627. "[C]onduct that is protected by the presumption of innocence may not be evaluated using the preponderance-of-the-evidence standard without violating due process." *Id.* In applying *Beck*'s holding and reasoning, this Court has determined, "sentencing court[s] may not rely even in part on acquitted conduct when imposing a sentence[.]" but sentencing courts do not "violate that principle by considering the entire res gestae of an acquitted offense." *People v Stokes*, 333 Mich App 304, 310; 963 NW2d 643 (2020). Additionally, "*Beck* does not preclude a sentencing court from generally considering the time, place, and manner in which an offense of which a defendant has been convicted is committed." *Id.* at 311. Indeed "*Beck* expressly permits trial courts to consider uncharged conduct and any other circumstances or context surrounding the defendant or the sentencing offense." *Beesley*, \_\_\_ Mich App at \_\_\_; slip op at 7.

As noted, a trial court may assess 100 points for OV 3 if "death results from the commission of a crime and homicide is not the sentencing offense." MCL 777.33(2)(b). Defendant incorrectly argues the trial court erred when it considered any of the events that occurred before Fleming crashed the vehicle, because that conduct relates to the first-degree murder charge, of which defendant was acquitted. Defendant was acquitted of first-degree murder and the lesser included offense of second-degree murder, but was convicted of felon-in-possession, felony-firearm, and assault with intent to commit murder. Those acquittals did not preclude the trial court from considering defendant's status as a felon-in-possession, or his shooting at the vehicle before the accident, and the resulting death of Petty, in assessing points for OV 3.

Under *Stokes*, a court may consider the time, place, and manner in which an offense that defendant was convicted of was committed without violating *Beck*. *Stokes*, 333 Mich App at 311. Here, the trial court did not consider the first-degree murder charge in its assessment of points for OV 3, as the trial court only considered whether homicide was the sentencing offense and whether a death resulted from the commission of a crime, and found Petty's death resulted from "the commission of [defendant's] assault on Mr. Fleming with the intent to murder him." In analyzing defendant's actions that occurred before the motor vehicle accident, the trial court properly considered the time, place, and manner in which an offense that defendant was convicted of was committed, not defendant's acquitted conduct. At sentencing, the trial court did not mention defendant's first-degree murder charge in its assessment of points for OV 3, instead noting "[Petty's] death resulted from the commission of the crimes involving weapons." Indeed, the trial court explicitly found "there is sufficient evidence on the record that the use of the firearm in this case resulted in death." Thus, the trial court did not err when it assessed 100 points for OV 3.

Affirmed.

/s/ Michael F. Gadola  
/s/ Jane E. Markey  
/s/ Christopher M. Murray

## **APPENDIX B**

STATE OF MICHIGAN  
IN THE CIRCUIT COURT FOR THE COUNTY OF WAYNE

PEOPLE OF THE STATE OF MICHIGAN,

Case No: 15-000373-01-FC

vs.

DEMETRIUS TROY BRADLEY,

HON. CATHERINE L. HEISE

Defendant.

At a session of said Court, held in the City of Detroit, County of Wayne,

On JUL 29 2020

HONORABLE CATHERINE L. HEISE, Circuit Court Judge

**OPINION AND ORDER DENYING DEFENDANT'S MOTION FOR RELIEF FROM  
JUDGMENT AMENDMENT**

**I.**

**STATEMENT OF CASE**

This matter comes before the court on the "Motion for Relief from Judgment Amendment" filed by the defendant, Demetrius Troy Bradley. A Wayne County jury convicted Mr. Bradley of assault with intent to murder, felon in possession of a firearm, and felony firearm. The jury returned its verdict on November 11, 2015. Mr. Bradley appealed to the court of appeals, and raised the issues of improper admission of video evidence, and ineffective assistance of counsel. He asserted, as to the ineffective assistance of trial counsel claim, that his counsel did not move to exclude the defendant's recorded interview entirely, and that counsel





should have requested the “mere presence” jury instruction.<sup>1</sup> He also raised, by way of a supplemental pro se “Standard 4” brief, that counsel was ineffective in failing to have his coat tested for gunpowder, because he allegedly told his attorney that the substance on the coat was actually from cooking heroin. Mr. Bradley also alleged in that counsel was ineffective for not introducing a lab report or expert testimony to show that the substance that caused a dog to alert was not gunpowder.

Mr. Bradley also asserted, at the appellate court level, that the prosecutor engaged in misconduct by referring to the gunpowder residue in closing. Finally, he claimed that he was entitled to resentencing because the trial court relied on judicial fact-finding to score certain offenses. The Michigan Court of Appeals affirmed the defendant’s conviction.<sup>2</sup> The Michigan Supreme Court denied the defendant’s application for leave to appeal.<sup>3</sup>

Mr. Bradley filed a Motion for Relief from Judgment under MCR 6.500 *et seq.* In its written opinion dated October 2, 2019, this court held that Mr. Bradley raised issues in his motion that could have been raised on appeal. This court also held that Mr. Bradley had not met his high burden of establishing ineffective assistance of appellate counsel.

Mr. Bradley has now filed an “amended” Motion for Relief from Judgment, contending that the case of *People v Beck*<sup>4</sup> constitutes a “retroactive change in the law”<sup>5</sup> that entitles him to resentencing. Mr. Bradley submits that this court improperly scored “acquitted conduct” when it

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<sup>1</sup> M Crim JI 8.5.

<sup>2</sup> *People v Bradley*, unpublished opinion *per curiam* of the Court of Appeals, issued August 15, 2017 (Docket No. 331146).

<sup>3</sup> *People v Bradley*, unpublished order of the Michigan Supreme Court, entered April 4, 2018 (Docket No. 156489).

<sup>4</sup> 509 Mich 605; 939 NW2d (2019)

<sup>5</sup> MCR 6.508(D)(3); MCR 6.502(G)(2).

sentenced him to 35 to 55 years for his assault with intent to murder conviction, and two years for the felony firearm conviction. Specifically, Mr. Bradley argues:

1. This court erred in scoring OV 3, physical injury to victim, at 100. Mr. Bradley asserts that, since he was acquitted of the murder charge, the 100 point assessment violates the high court's holding concerning acquitted conduct announced in *People v Beck*<sup>6</sup>. He also asserts that the holding in *Beck* constitutes a "retroactive change in the law"<sup>7</sup> that entitles him to resentencing under a newly reduced guideline scoring;

2. This court erred in scoring 10 points for OV 4, "psychological injury to a victim".

3. This court erred in scoring 10 points for OV 9, "number of victims"; and

4. This court erred in scoring 10 points for OV 13, "continuing pattern of criminal behavior."<sup>8</sup>

For all the reasons set forth below, this court DENIES the defendant's Motion for Relief from Judgment Amendment.

## II.

### ISSUES PRESENTED

1. Does *People v Beck* apply to the scoring of OV 3 at 100 points?
2. Does the defendant's argument that the scoring of OV's 4, 9 and 13 is incorrect violate the court rule concerning one and only one motion for relief from judgment?

<sup>6</sup> 504 Mich 605; 939 NW2d 213 (2019).

<sup>7</sup> MCR 6.502(G)(2).

<sup>8</sup> The defendant does not explain in his motion for relief from judgment amendment how *Beck* changes the scoring of OV's 4, 9 and 13.

3. Has the defendant met his burden of establishing entitlement to relief by alleging grounds which were not raised on appeal? Alternatively, is the defendant raising an argument that has already been advanced in the court of appeals and denied?

3. Is the defendant entitled to resentencing?

### III.

#### FACTS ADDUCED FROM TRIAL COURT AND APPELLATE RECORD

1. At the defendant's sentencing on December 4, 2015, after extensive argument by counsel, the court assessed OV 3 at 100 points. The prosecutor argued that "the second paragraph says you score the 100 points if the death results from the commission of an offense and homicide is not the sentencing offense. This is the perfect case where homicide is not one of the elements of the crime but somebody died. And that's why you do get the 100 points."<sup>9</sup>

2. Defense counsel agreed with the scoring of OV 9 at 10 points.<sup>10</sup>

3. As to the scoring of OV 13 at 10 points, defense counsel stated "[a]nd OV 13 was scored at 10 points. And my client has some drug charges possession with attempt to deliver, three of them, and 10 points is properly scored there."<sup>11</sup>

4. The guidelines were scored at 270 to 562, because the defendant was an habitual second offender.<sup>12</sup>

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<sup>9</sup> Sentencing transcript at 20.

<sup>10</sup> Sentencing transcript at 21.

<sup>11</sup> Sentencing transcript at 22.

<sup>12</sup> Sentencing transcript at 27.



5. On direct appeal, the defendant raised the issues of admission of evidence, ineffective assistance of counsel, prosecutorial misconduct, and sentencing.<sup>13</sup> The defendant argued that the court engaged in “judicial fact-finding” in violation of *People v Lockridge*,<sup>14</sup>. The court of appeals held that *Lockridge* does not “prohibit the use of judicially-found facts in scoring the guidelines”, and the defendant has not shown plain error.”<sup>15</sup>

#### IV.

#### PRINCIPLES OF LAW

1. MCL § 777.33(1) provides that OV 3 is “physical injury to a victim”, and is to be scored by determining which of several entries on a chart of possible scores apply and “by assigning the number of points attributable to the one that has the highest number of points.”<sup>16</sup>

2. Neither MCL § 777.33 nor any other statutory provision provides a definition of “victim” for purposes of OV 3.<sup>17</sup> The Legislature is presumed to be familiar with the principles of statutory construction.<sup>18</sup> The term “victim”, for purposes of OV 3, includes any person harmed by the criminal actions of the charged party.<sup>19</sup>

3. MCL § 777.33(2)(b) requires that OV 3 be scored at “100 points if death results from the commission of a crime and homicide is *not* the sentencing offense.”<sup>20</sup>

<sup>13</sup> *People v Bradley*, *supra*, at fn 2.

<sup>14</sup> 498 Mich 358; 870 NW2d 502 (2015).

<sup>15</sup> *People v Bradley*, *supra*, at fn 2.

<sup>16</sup> *People v Albers*, 258 Mich App 578, 592; 672 NW2d 336, 344 (2003).

<sup>17</sup> *Id.*

<sup>18</sup> *Id.* at 593; 672 NW2d at 344.

<sup>19</sup> *Id.*

<sup>20</sup> Emphasis added.

4. MCL § 777.34, Offense Variable 4, is for serious psychological injury. There are only two scoring options: 10 points if a victim suffered serious psychological injury that may require professional treatment, or 0 points if the victim did not suffer serious psychological injury requiring professional treatment.

5. MCL § 777.39, Offense Variable 9, is the number of victims. A score of 10 points is prescribed where there were “2 to 9 victims who were placed in danger of physical injury or death.” The court may consider not only a person who died as a result of the criminal conduct, but also those persons who were placed in danger of physical injury or death.<sup>21</sup>

6. MCR 6.508(D) states that the “defendant has the burden of establishing entitlement to the relief requested. MCR 6.508(D)(3) states that the court may not grant relief to a defendant if a motion “alleges grounds for relief...which could have been raised on appeal from the conviction and sentence or in a prior motion” under MCR 6.500 *et seq.*, and the defendant shows good cause for failure to “raise such grounds on appeal or in the prior motion, and “actual prejudice” from the “alleged irregularities that support the claim for relief.”

7. MCR 6.502(G)(1) states that “one and only one motion for relief from judgment may be filed with regard to a conviction.”

8. MCL § 777.43, “Continuing Pattern of Criminal Behavior”, governs the scoring of Offense Variable 13. Subsection (2)(a) states that “for determining the appropriate points under this variable, all crimes within a 5-year period, including the sentencing offense, should be counted regardless of whether the offense resulted in a conviction.

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<sup>21</sup> *People v Lechleitner*, 291 Mich App 56, 63; 804 NW2d 345, 349 (2010).

9. In *People v. Beck*, the Michigan Supreme Court held that once a defendant is acquitted of a given crime, it violates due process to sentence the defendant as if he committed that very same crime.<sup>22</sup> The court held that the trial court erred in relying in part on acquitted conduct to depart from the sentencing guidelines range. The trial courts may rely on uncharged conduct using the preponderance of the evidence standard, but when a jury has found beyond a reasonable doubt that the defendant did not engage in certain charged conduct, the defendant is entitled to the presumption of innocence and considering that same conduct at sentencing is fundamentally inconsistent with the presumption of innocence.<sup>23</sup>

10. Where a scoring error does not alter the appropriate guidelines range, resentencing is not required.<sup>24</sup>

## V.

### ANALYSIS

The principal argument in the defendant's Motion for Relief from Judgment Amendment is that this court's scoring of OV 3, Physical Injury to Victim, should not have been scored at 100 because Mr. Bradley was acquitted of the first degree murder charge<sup>25</sup> involving the death of Mr. Petty. Mr. Bradley argues that scoring OV 3 at 100 violates the principles enunciated in *Beck*.

Mr. Bradley's reliance on *Beck*, however, is misplaced. Under MCL § 777.33, offense variable 3 is scored at 100 if two conditions are met: death results from the commission of a

<sup>22</sup> *Beck* at 626, 939 NW2d at 225.

<sup>23</sup> *Id.*

<sup>24</sup> *People v. Davis*, 468 Mich 77, 83; 658 NW2d 800 (2003).

<sup>25</sup> Mr. Bradley was also acquitted of the lesser included offense of second degree murder.



crime, and homicide is not the sentencing offense. Mr. Bradley is correct – he was acquitted of the homicide charge of Mr. Petty, but he was convicted for the assault with intent to murder of Mr. Fleming. Thus, the homicide of Mr. Petty was not the sentencing offense, but assault with intent to murder Mr. Fleming was. Unlike *Beck*, where the trial court found by a “preponderance of the evidence” that the defendant murdered the deceased although the jury acquitted him of the murder,<sup>26</sup> this court considered only whether a death resulted and homicide was not the sentencing offense. Further, there can be no doubt that Mr. Petty’s death “resulted from” the commission of Mr. Bradley’s assault on Mr. Fleming with the intent to murder him. Mr. Bradley shot at the vehicle in which Mr. Fleming and Mr. Petty were riding, and a high speed chase ensued. Mr. Petty lost control of the vehicle, causing it to flip and Mr. Petty to be thrown out of the vehicle and sustain fatal injuries. This court correctly scored OV 3 at 100 because Mr. Petty died as a result of the chain of events set into motion by Mr. Bradley, and the homicide of Mr. Petty was not Mr. Bradley’s sentencing offense. *People v Beck* does not alter this score.

This court further finds that *People v Beck* does not affect the scoring of offense variables 4 (psychological injury to victim), 9 (number of victims) and 13 (continuing pattern of criminal behavior). Even putting aside the death of Mr. Petty, both Mr. Fleming and Mr. Terrell were “victims”<sup>27</sup> of Mr. Bradley’s actions, satisfying OV 9’s requirement of at least 2 victims. *Beck* does not change that result. As to OV 13, Mr. Bradley had three drug convictions, as noted by

<sup>26</sup> *Beck* at 612; 939 NW2d at 217. The trial judge in *Beck* went above the guidelines and sentenced the defendant to 240 to 400 months of incarceration, even though the guideline score was 22 to 76 months. The *Beck* court noted that the trial court found “by a preponderance of the evidence” that the defendant killed the victim, although the jury, applying the “beyond a reasonable doubt” standard, acquitted him of the murder. *Id.*

<sup>27</sup> The trial record reflects that Mr. Terrell sustained three fractured ribs, a tear in his shoulder, a crack in his hip, and a broken femur. (Trial transcript, 11/5/2015, at 121.) Mr. Fleming testified to being in fear for his safety (trial transcript, 11/5/2015, at 35, that he crawled out of the van (trial transcript, 11/5/2015, page 36), and that he had blood on his face (11/5/2015, page 39).

defense counsel at sentencing, making OV 13 properly scored at 10. *Beck* does not change that result.

Additionally, as to the scoring of Offense Variables 4, 9 and 13, the court finds, first, that *People v Beck* does not constitute a “retroactive change in law” that occurred after Mr. Bradley’s first motion for relief from judgment. None of the elements of these three offense variables arose from acquitted conduct. The defendant’s Motion for Relief from Judgment Amendment, therefore, as to the scoring of these three offense variables is improper, as a “successive motion” under MCR 6.502(G). Second, because these three offense variables were not affected by the holding in *People v Beck*, the defendant’s contention that the three variables were scored incorrectly could have been raised on his unsuccessful appeals from his conviction and sentence. Or, if his objections to the scoring of OV 4, 9 and 13 were, indeed, raised on appeal, then they cannot be considered now.<sup>28</sup> This court therefore finds that the defendant has not met his burden of establishing entitlement to relief, as he has not shown “good cause” for failure to raise these grounds on appeal. If he is now challenging the scoring of guidelines that were already raised on appeal, then that challenge cannot be addressed now.

Finally, this court notes that, with the correct scoring of OV 3 at 100 points, the defendant was at an OV level VI – the highest possible level - on the sentencing grid for Class A offenses. His total Offense Variable score was 210. Even if Offense Variables 4, 9, and 13 were incorrectly scored, his Offense Variable score would be 180. Any scoring error<sup>29</sup> would not alter the appropriate guideline range. The court finds that resentencing is not required.

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<sup>28</sup> The unpublished opinion of the court of appeals does not identify which offense variables Mr. Bradley raised on appeal or what the nature of his argument was.

<sup>29</sup> Irrespective of *Beck*, improper filing of a subsequent motion, or failure to show “good cause.”



VI.

CONCLUSIONS OF LAW

1. The holding of the Michigan Supreme Court in the case of *People v Beck* does not apply to the scoring of Offense Variable 3 in this case. Offense Variable 3 was correctly scored at 100 points, because homicide was not the sentencing offense.

2. The defendant's argument that Offense Variables 4, 9, and 13 were incorrectly scored violates the "one and only one" motion for relief from judgment rule.

3. The defendant has not met his burden of establishing entitlement to relief by showing good cause for failure to raise his arguments concerning the scoring of OV 4, 9, and 13 on appeal. If the scoring of OV's 4, 9 and 13 were raised on direct appeal, they cannot be considered now.

4. Because Offense Variable 3 was correctly scored at 100, placing him at a Level VI on the sentencing grid for a Class A offense, any alleged error in scoring the remaining Offense Variables would not alter the guideline range.

VII.

ORDER

The defendant's Motion for Relief from Judgment Amendment is DENIED.

The court directs that this written opinion be made a part of the record of this case.



CATHERINE L. HEISE (P41614)  
WAYNE COUNTY CIRCUIT COURT

Date: JUL 29 2020

## **APPENDIX C**

# Order

Michigan Supreme Court  
Lansing, Michigan

July 28, 2022

Bridget M. McCormack,  
Chief Justice

164176

Brian K. Zahra  
David F. Viviano  
Richard H. Bernstein  
Elizabeth T. Clement  
Megan K. Cavanagh  
Elizabeth M. Welch,  
Justices

PEOPLE OF THE STATE OF MICHIGAN,  
Plaintiff-Appellee,

v

SC: 164176  
COA: 355549  
Wayne CC: 15-000373-FC

DEMETRIUS TROY BRADLEY,  
Defendant-Appellant.

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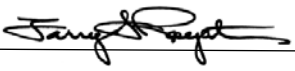
On order of the Court, the application for leave to appeal the January 20, 2022 judgment of the Court of Appeals is considered, and it is DENIED, because we are not persuaded that the questions presented should be reviewed by this Court.



a0725

I, Larry S. Royster, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

July 28, 2022

  
Clerk