

COA Opinion: It is inappropriate to score 10 points under OV 10 where the defendant and victim were not related and only shared a former dating relationship

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On Tuesday, April 26, 2011, the Court of Appeals published its opinion in *People v. Jamison*, Case No. 297154. In *Jamison*, the court concluded that the defendant had been improperly scored 10 points under Offense Variable (“OV”) where she only shared a former dating relationship with the victim. In doing so, the court declined to extend the unpublished opinion of *People v. Davis*, Case. No. 280547, which held that a defendant was properly score 10 points under OV 10 if the victim and defendant were ever involved in a dating relationship, were residents of the same household, or had a child in common. The *Jamison* court concluded that this broad definition only applied where the defendant’s underlying conviction was for domestic assault. In other cases, OV 10 would only be scored where the victim and defendant shared a familial relationship or were cohabitating at the time of the offense. Because *Jamison* was sentenced to a term of imprisonment higher than her proper guideline range, the court reversed and remanded the matter for resentencing.

Defendant *Jamison* and the victim, *Jenkins*, dated for a year in 2006-2007. In early 2008, the couple ended their relationship. A year later, on May 3, 2009, *Jenkins* and *Jamison* passed each other while driving. *Jamison* pulled behind *Jenkins* and began driving erratically. In response, *Jenkins* pulled over to the side of the road to allow *Jamison* to pass. *Jamison* pulled her car alongside *Jenkins*’ car, pulled out a gun, and fired at *Jamison*. She missed.

Following a jury trial, *Jamison* was convicted of: 1) assault with intent to do great bodily injury less than murder; and, 2) felony firearm. The probation officer’s pre-sentence investigation report scored 10 points for OV 10 because *Jenkins* and *Jamison* were in a “domestic relationship” at the time of the assault. At sentencing, *Jamison* argued that OV 10 was improperly scored because she was not dating or cohabiting with *Jenkins* on May 3, 2009 and therefore they did not have the required “domestic relationship”. The trial court disagreed and concluded that the probation officer correctly scored 50 offense variable points which resulted in a minimum sentence guideline range of 0 to 17 months. Accordingly, the court sentenced *Jamison* to 1 to 10 years in prison with a mandatory 2 year consecutive sentence on the felony firearm charge. *Jamison* appealed.

On appeal, the Court noted that the sentencing guidelines do not define “domestic relationship”. Therefore, the court turned to its previous unpublished opinion in *People v. Davis* for guidance. In *Davis*, the defendant challenged his OV 10 score following a conviction for domestic violence. In that case, the court looked to the domestic assault statute for an interpretation of “domestic relationship” used in OV 10. Based on the statute, the *Davis* court concluded that if the victim and defendant had a former dating relationship, it was proper to score OV 10. Under the *Davis* approach, *Jamison* would be scored OV 10 no matter how long ago the pair ended their relationship. The court was troubled by the lack of consideration given for the brevity and temporal proximity of the

dating relationship. Additionally, the court found it significant that while the domestic assault statute specifically listed “dating relationships”, OV 10 is limited to situations where the individuals are in a “domestic relationship”. Accordingly, the *Jamison* court declined to extend the *Davis* ruling to criminal cases where the defendant was not charged or convicted of domestic assault.

Instead, the Court of Appeals looked to the dictionary definition of “domestic” and concluded that it required the defendant to be cohabiting with the victim or have a familial relationship with the victim at the time of the offense. It does not apply to any type of dating relationship, past or present.

Because Jenkins and Jamison were not related or cohabiting at the time of the May 3, 2009 assault, the court concluded that the 10 points under OV 10 were improperly scored. Consequently, Jamison should have been assigned a total of 40 offense points. This offense level would have yielded a sentencing guideline range of 0 to 11 months. Because the defendant’s minimum sentence of 1 year is above the proper guideline range, the court vacated her sentence and remanded the case to the trial court for resentencing consistent with the court’s opinion.