

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

TIMOTHY J. FELTON,

Defendant-Appellant.

UNPUBLISHED

March 4, 1997

No. 177854

Recorder's Court

LC No. 91-005091

Before: Jansen, P.J., and Reilly and W.C. Buhl,* JJ.

PER CURIAM.

Defendant pleaded guilty to violating his probation. Defendant had originally been sentenced to a term of lifetime probation for possession with intent to deliver less than fifty grams of cocaine. Defendant's probation violation arose out of a conviction of possession with intent to deliver more than 50 but less than 225 grams of cocaine. The sentencing agreement in this case was that defendant would be sentenced to consecutive sentences of one to twenty years' imprisonment for the probation violation and that he would receive a maximum sentence of ten to twenty years' imprisonment for the conviction of possession with intent to deliver more than 50 but less than 225 grams of cocaine. The trial court subsequently sentenced defendant to consecutive terms of one to twenty and ten to twenty years' imprisonment as required by the sentence agreement. Defendant now appeals as of right.

On appeal, defendant contends that he is entitled to resentencing because the trial court failed to correct an inaccuracy in the presentence report regarding his prior convictions. At sentencing, the trial court stated that one reason it would not depart from the mandatory minimum was because defendant had recently been convicted of bank robbery. Defense counsel immediately corrected the trial court and stated that defendant was not convicted of bank robbery, only arrested on that charge, but that he had pleaded guilty to a weapons offense instead. The trial court then acknowledged that defendant had not been convicted of bank robbery. There is certainly no indication that the trial court refused to depart from the mandatory minimum term because of its belief that defendant had been convicted of bank robbery. Rather, the trial court specifically stated that there were no substantial and compelling reasons to depart downward.

* Circuit judge, sitting on the Court of Appeals by assignment.

Therefore, defendant was not sentenced on the basis of inaccurate information. However, because the presentence report does indicate that defendant was convicted of bank robbery, and because that information was not stricken from the presentence report, we remand for the limited purpose of correcting the presentence report so that it does not indicate that defendant was convicted of bank robbery. *People v Britt*, 202 Mich App 714, 718; 509 NW2d 914 (1993); *People v Newson (After Remand)*, 187 Mich App 447, 450; 468 NW2d 249 (1991) vacated in part on other grounds 437 Mich 1054 (1991); MCR 6.425(D)(3). Defendant's conviction of probation violation and his sentence of one to twenty years for that conviction are otherwise affirmed.

Affirmed, but remanded for the limited purpose of striking the challenged information in the presentence report as noted in this opinion. No further jurisdiction is retained.

/s/ Kathleen Jansen

/s/ Maureen Pulte Reilly

/s/ William C. Buhl