

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

PHILLIP DEMETRIUS REYNOLDS,

Defendant-Appellant.

UNPUBLISHED

March 18, 1997

No. 187912

Saginaw Circuit Court

LC No. 94-009787-FH

Before: Jansen, P.J., and Young and R.I. Cooper,* JJ.

PER CURIAM.

Defendant pleaded nolo contendere to breaking and entering an occupied dwelling, MCL 750.110; MSA 28.305. He was subsequently sentenced to ten to fifteen years' imprisonment. Defendant appeals as of right and we remand.

Defendant raises four issues on appeal, all of which relate to his sentence. We first address his claim regarding offense variable 8 (OV 8). OV 8 concerns a continuing pattern of criminal behavior and is scored ten points where the "offense is part of a pattern of criminal activities over a period of time form which the offender derives a substantial portion of his or her income and/or the offense is directly related to membership in an organized criminal group." Defendant objected to the score of ten points for OV 8 at sentencing, but the trial court specifically overruled the objection. The trial court's scoring of the sentencing guidelines will be upheld if there is evidence to support the score. *People v Hernandez*, 443 Mich 1, 16; 503 NW2d 629 (1993).

The offense was committed on July 21, 1994, and defendant was twenty-three years old at the time of the offense. According to the presentence report, defendant had been a college student, attending Eastern Kentucky University, Elon College, and University of Michigan-Flint. At the time he committed the offense, he was employed at a Bill Knapps restaurant. There is no other employment history. However, defendant has an extensive criminal history. His prior convictions, mainly arising in Florida, include multiple counts of robbery, burglary, larceny, breaking and entering, and other property

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

offenses. His criminal history dates back to 1990, when defendant was only twenty years old and attending college. His criminal history indicates that he would steal property and then pawn the stolen items. Under these circumstances, the trial court had adequate evidence to conclude that the offense was part of a continuing pattern of criminal activities over a period of time from which defendant derived a substantial portion of his income. Accordingly, there is record evidence to support the trial court's score of ten points for OV 8.

Next, defendant contends that he is entitled to resentencing because the trial court failed to state reasons for departing from the sentencing guidelines on the record and on the SIR departure form. A sentencing court is required to articulate its reasons for departing from the sentencing guidelines on the record and on the SIR departure form. *People v Fleming*, 428 Mich 408, 428; 410 NW2d 266 (1987). We agree that the trial court did not complete an SIR departure form, as required, and we remand for the limited purpose of allowing the trial court to state its reasons for departing from the guidelines range on the SIR departure form. However, a review of the sentencing transcript reveals that the trial court adequately stated reasons for departing from the sentencing guidelines on the record.

A full resentencing in this regard, however, is not required. See *People v Triplett*, 432 Mich 568, 573; 442 NW2d 622 (1992). We remand for the limited purpose of allowing the trial court to complete an SIR departure form only.

Defendant next argues that he is entitled to correction of his presentence report because the trial court indicated its agreement with his challenges to certain information in the report. We agree. At sentencing, defendant objected to the listing of convictions in North Carolina as being felonies, when they were misdemeanor convictions. The North Carolina convictions must be changed to misdemeanor convictions in the presentence report. Further, the trial court agreed to strike the information that defendant kicked in the front door of the house, and this information must also be stricken from the presentence report. The trial court also agreed that, with respect to the offenses committed in Florida, the adjudications were withheld in Orange County, Polk County, and Osceola County. Accordingly, those felony adjudications must also be stricken from the presentence report. MCR 6.425(D)(3); *People v Britt*, 202 Mich App 714, 718; 509 NW2d 914 (1993).

Last, we consider defendant's argument that his sentence of ten to fifteen years for breaking and entering violates the principle of proportionality. It does not. Although the sentencing guidelines were twelve to forty-eight months, there was adequate support for the trial court's decision to depart from the guidelines range. First, defendant received a plea reduction in which offenses of receiving and concealing stolen property in excess of \$100 and fourth habitual offender were dismissed in exchange for the plea. *People v Duprey*, 186 Mich App 313, 318; 463 NW2d 240 (1990). Further, defendant was on probation when he committed the instant offense, and committed two felonies in Oakland County just eight days after committing the instant crime. Defendant has a very significant criminal history, and acknowledged that he did commit the offenses in Florida (over twenty felony charges were lodged against defendant in just over two years). See *People v Chesebro*, 206 Mich App 468, 474; 522 NW2d 677 (1994) (prior conduct may be considered in deciding whether to depart from the guidelines range even if that prior conduct cannot be scored under the offense variable). We cannot

conclude that the trial court abused its discretion in exceeding the guidelines range and sentencing defendant to ten to fifteen years' imprisonment. *People v Milbourn*, 435 Mich 630; 461 NW2d 1 (1990).

Defendant's conviction and sentence are affirmed. We remand for the limited purposes of allowing the trial court to complete an SIR departure form and to strike the challenged information in the presentence investigation report. No further jurisdiction is retained.

/s/ Kathleen Jansen

/s/ Robert P. Young, Jr.

/s/ Richard I. Cooper