

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

BILLY WAYNE TOLLENAAR,

Defendant-Appellant.

UNPUBLISHED

April 4, 1997

No. 192018

Kent Circuit Court

LC No. 94-002528-FH

Before: D.F. Walsh,* P.J., and R.P. Griffin** and W.P. Cynar,* JJ.

MEMORANDUM.

Defendant pleaded guilty to assault with the intent to commit criminal sexual conduct involving sexual penetration, MCL 750.510g(1); MSA 28.788(7)(1), and was sentenced to 6-2/3 to 10 years' imprisonment. He appeals as of right. We affirm. This case has been decided without oral argument pursuant to MCR 7.214(E)(1)(b).

Defendant is not entitled to resentencing on the basis of allegedly disputed facts. Assuming arguendo that defendant has not waived this issue by prior counsel's failure to challenge the contents of the presentence report and assuming that defendant raised an effective challenge below to the contents of the presentence report, the sentencing court's scoring of the guidelines and its determinations upon which it based its departure from the sentencing guidelines were adequately supported by the record. *People v Hernandez*, 443 Mich 1, 3, 16; 530 NW2d 629 (1993); *People v Walker*, 428 Mich 261, 267-268; 407 NW2d 367 (1987); *People v Ratkov (After Remand)*, 201 Mich App 123, 125; 505 NW2d 886 (1993). Moreover, prior defense counsel expressly acknowledged at resentencing that the sentencing guidelines as corrected and recalculated were accurate. There being adequate evidence in the record to support the scoring of the sentencing guidelines, defense counsel had no grounds upon

*Former Court of Appeals judges, sitting on the Court of Appeals by assignment pursuant to Administrative Order 1996-10.

**Former Supreme Court justice, sitting on the Court of Appeals by assignment pursuant to Administrative Order 1996-10.

which to object to the score. Counsel is not required to argue a groundless objection at sentencing. *People v Rodriguez*, 212 Mich App 351, 356; 538 NW2d 32 (1995). Defendant has not established the ineffective assistance of counsel on this basis.

Next, the record belies defendant's claim that an updated presentence report was not provided prior to resentencing in this matter. At the resentencing hearing, prior defense counsel *and* defendant each acknowledged the existence of an updated report. Defendant's claim on appeal of ineffective assistance of counsel based on previous counsel's failure to object to the lack of a presentence report is devoid of merit.

Affirmed.

/s/ Daniel F. Walsh

/s/ Robert P. Griffin

/s/ Walter P. Cynar