STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

NORMAN LEE SLATER,

Defendant-Appellant.

UNPUBLISHED
September 19, 1997

No. 198488
Oscoda Circuit Court
LC No. 96-000528 FC

Before: Markey, P.J., and Neff and Smolenski, JJ.

MEMORANDUM.

On plea of guilty, pursuant to a bargain by which original charges of first degree criminal sexual conduct were dismissed and an unrelated charge of second degree criminal sexual conduct was dropped, defendant pled guilty to attempted second degree criminal sexual conduct, MSA 750.520c; MSA 28.788(3); MCL 750.92; MSA 28.287. He was then sentenced to 3 to 5 years' imprisonment, and appeals of right. This appeal is being decided without oral argument pursuant to MCR 7.214(E). We affirm.

Defendant first contends that the trial court considered improper factors at sentencing and failed to individualize defendant's sentence. We disagree. The factors the court identified as relevant to the sentence imposed were all proper. *People v Snow*, 386 Mich 586, 592; 194 NW2d 314 (1972).

Next defendant alleges that because the guardian for the victim's child, conceived in consequence of this crime, was identified in the presentence report as making a victim's impact statement, he is entitled to resentencing. The label placed on this statement is inconsequential; its only relevance would be that, if the guardian were actually a crime victim or a person authorized to speak for the crime victim, the trial court would be legally obligated to permit the victim to address the court at sentencing. MCL 780.752; MSA 28.1287(752). The trial court, however, always has discretion to consider statements from any concerned person with regard to sentencing. *People v Albert*, 207 Mich App 73, 74-75; 523 NW2d 825 (1994). Any error in nomenclature is too insubstantial to warrant appellate relief or correction of the presentence report. As to redaction of the guardian's letter because of claimed inaccuracies ostensibly accepted by the trial court, the situation changed when the actual

victim addressed the court, thereby establishing, to the trial court's satisfaction, duly noted on the record, that the alleged inaccuracy previously asserted by defendant was in fact accurate information concerning counseling and relevant to the proper scoring of offense variable 13. Again, no correction of the presentence report in this respect is warranted.

Defendant argues that because certain mitigating letters were not attached to the presentence report, he was deprived of his right of allocution. Before either defendant or defense counsel were accorded their right of allocution, the fact that such letters had not been included with the presentence report was made known to them. Yet neither defendant nor defense counsel thereafter sought to introduce the letters. The trial court has no obligation to consider anything that the parties had an opportunity to adduce for their respective benefits but failed to present.

The suggestion that defendant's sentence is disproportionate to the offense and the offender because it is in excess of the guideline range is without merit. The trial court adequately articulated valid and substantial reasons for imposing a sentence in excess of the guideline range, particularly that the facts established that the original offense charged was committed, even though defendant had the benefit of a plea bargain. *People v Duprey*, 186 Mich App 313; 463 NW2d 240 (1990). As the sentence imposed was above the guideline range, both the guideline range itself, *People v Hull*, 437 Mich 868; 462 NW2d 585 (1990), and the scoring of the guidelines, *People v Mitchell*, 454 Mich 145, 170; 560 NW2d 600 (1997), were irrelevant.

As resentencing is unwarranted for any reason, there is no merit to the suggestion that resentencing should be conducted before a different judge.

Affirmed.

/s/ Jane E. Markey
/s/ Janet T. Neff
/s/ Michael R. Smolenski