

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

MEVELYN JEANETTE PEABODY,

Defendant-Appellant.

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UNPUBLISHED

January 13, 1998

No. 195632

Oakland Circuit Court

LC No. 93-129104 FH

Before: Gage, P.J., and Murphy and Reilly

MEMORANDUM.

On this appeal of right from defendant's guilty plea to probation violation and enhanced sentence, as a fourth offender on the underlying offense of retail fraud in the first degree, MCL 750.356c; MSA 28.588(3), defendant contends that the trial court erred in relying on inaccurate information contained in the presentence report in imposing sentence and in later denying her motion for resentencing and for correction of the presentence report.

The claimed inaccuracies concern assertions in the presentence report that, while defendant was on delayed sentencing status in 1995, a hypodermic needle wrapped in a bloody stained tissue was found in her locker when she left a drug treatment program, and that defendant has failed to successfully complete prior drug treatment programs when made available to her. Defendant argues that the inaccuracies appear in a report requesting issuance of a bench warrant for probation violation dated August 30, 1995, and in an updated presentence report dated September 23, 1996. However, these inaccuracies merely recapitulate information found in a presentence report dated March 16, 1995, which formed the basis for defendant's sentencing to two years' probation on March 23, 1995, after delayed sentencing status was revoked. No transcript of the March 23, 1995, sentencing proceedings has been furnished to this Court, which must therefore assume that at that sentencing defendant was accorded the opportunity to correct the presentence report of March 16, 1995, and that there were no such corrections. MCR 6.425(D)(2)(b). Accordingly, the trial court's conclusion that there are no inaccuracies in the later presentence reports is not clearly erroneous.

Furthermore, the trial court stated for the record that it was not considering any such contested facts in sentencing defendant for probation violation. Given defendant's prior criminal record of 11 felonies and 7 misdemeanors, the 1 to 15 year sentence for this fourth offender in no way suggests that such ancillary matters adversely affected the sentencing decision. Furthermore, any such claimed inaccuracies fail to rise to the level of representing an "extensively and materially false" foundation for the sentence imposed, and therefore resentencing on this basis is precluded. *People v Mitchell*, 454 Mich 145, 173; \_\_\_ NW2d \_\_\_ (1997), quoting *Townsend v Burke*, 334 US 736; 68 S Ct 1252; 92 L Ed 1690 (1948).

Affirmed.

/s/ Hilda R. Gage

/s/ William B. Murphy

/s/ Maureen Pulte Reilly