

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ALBERT PRINCE FRAZIER, JR.,

Defendant-Appellant.

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UNPUBLISHED

July 31, 1998

No. 199754

Calhoun Circuit

LC No. 96-001671

Before: Doctoroff, P.J., and Fitzgerald and Talbot, JJ.

PER CURIAM.

After a jury trial, defendant was convicted of second degree home invasion, MCL 750.110a(3); MSA 28.305(a)(3), and was subsequently convicted of being an habitual offender, fourth offense, MCL 769.12; MSA 28.1084. Defendant was sentenced to seven to twenty years' imprisonment. He now appeals as of right. We affirm defendant's convictions and sentence, but remand to the trial court for correction of the presentence investigation report.

On April 8, 1996, the victim spent the night with her daughter at her mother's house. She returned to her apartment in Albion on the morning of April 9, 1996 and discovered that several items were missing from her apartment. A screen had been pried open to provide entry to the home through a bedroom window. The police discovered the victim's missing belongings in defendant's basement and defendant's fingerprints were found on one of the items.

Defendant contends that the evidence was insufficient to support his conviction of second-degree home invasion. In reviewing the sufficiency of the evidence, this Court views the evidence in a light most favorable to the prosecution to determine whether a rational trier of fact could conclude that the elements of the crime were proven beyond a reasonable doubt. *People v Wolfe*, 440 Mich 508, 515; 489 NW2d 748, modified 441 Mich 1201; 489 NW2d 748 (1992). A person who breaks and enters a dwelling with intent to commit a felony or a larceny in the dwelling or a person who enters a dwelling without permission with intent to commit a felony or a larceny in the dwelling is guilty of home invasion in the second degree. MCL 750.110a(3); MSA 28.305a(3).

The evidence against defendant in this case was largely circumstantial. However, circumstantial evidence and the reasonable inferences which arise from the evidence can constitute satisfactory proof of the elements of the crime. *People v Truong (After Remand)*, 218 Mich App 325, 337; 553 NW2d 692 (1996). In this case, the victim testified that she told defendant that she would be away from her apartment on the night of April 8, 1996. A sergeant with the Albion department of public safety testified that the victim told him that defendant was the only person who knew that the victim would be gone that night. The victim's possessions were found the next day in the basement of defendant's apartment, and defendant's fingerprints were identified on one of the items. The victim also testified that she discovered defendant's tote bag in her living room the day after the theft, and that the bag was not there before the theft occurred. Although defendant argues that he successfully challenged this evidence, all conflicts in the evidence must be resolved in favor of the prosecution. *Wolfe, supra* at 515. Further, this Court will not interfere with the jury's role of determining the weight of the evidence or the credibility of witnesses. *Id.* Therefore, viewed in a light most favorable to the prosecution, the evidence was sufficient to support defendant's conviction.

Defendant also argues that he is entitled to resentencing because the trial court failed to correct inaccurate information in the presentence report.

At sentencing, either party may challenge the accuracy or relevancy of any information contained in the presentence report. MCL 771.14(5); MSA 28.1144(5); MCR 6.425(D)(2)(b); *People v Hoyt*, 185 Mich App 531, 533-534; 462 NW2d 793 (1990). If the court finds that the challenged information is inaccurate or irrelevant, that finding must be made part of the record and the information must be corrected or stricken from the report. *Hoyt, supra*. MCR 6.425(D)(3)(a) requires the sentencing court to direct the probation officer to correct or delete challenged information in the report if the court finds merit to the challenge or determines that it will not take the challenged information into account in sentencing.

In this case, defendant challenged two 1975 convictions and one 1978 conviction, which the trial court ruled would be verified and stricken from the record if incorrect. The court also ruled that those convictions would not be considered in sentencing. The convictions have not been deleted from the presentence report. Defendant also requested that the personal history section of the report be changed to include defendant's wife and two children. The court agreed to that correction, which also is not reflected in the presentence report. The remainder of defendant's objections were denied although the trial court stated that it would not consider the portion of the report indicating that defendant had been fired from a job for "stealing from the till."

Because the sentencing judge expressly stated that he would not consider the 1975 or 1978 convictions listed in the presentence report, the court's failure to strike the challenged information was harmless error. *People v Fisher*, 442 Mich 560, 567 n 4; 503 NW2d 50 (1993). Further, although the information regarding defendant's wife and two children was not added to the report, the judge stated that he was familiar with that information from "elsewhere in this case." Although the presentence report was not corrected to reflect the sentencing court's rulings, the court expressly stated its intention to base its sentence on the corrected information. Therefore, defendant is not entitled to resentencing. However, we remand to the circuit court for correction of the presentence report. *Hoyt, supra* at 534.

Defendant also contends that his sentence of seven to twenty years' imprisonment is disproportionate. This Court reviews a sentencing court's decision for an abuse of discretion. *People v Milbourn*, 435 Mich 630, 651; 461 NW2d 1 (1990). A sentencing court abuses its discretion when it violates the principle of proportionality, which provides that a sentence must be proportionate to the circumstances of the offense and the background of the offender. *Id.*

Defendant argues that despite the court's statement that it would not consider "the disputed criminal history" it nonetheless noted that defendant had been convicted of five previous felonies. Defendant challenged only the 1975 and 1978 convictions listed in the presentence report. In sentencing defendant, the trial court clearly stated that it was disregarding the disputed criminal history and referenced only those felonies beginning in 1984. Therefore, the trial court properly considered defendant's criminal history in sentencing defendant.

Defendant also argues that the sentence was disproportionate because the trial court failed to consider the age of defendant's previous record, the nature of those charges and defendant's ability to be rehabilitated. To facilitate appellate review, the trial court must articulate on the record the criteria considered and the reasons for the sentence imposed. *People v Fleming*, 428 Mich 408, 428; 410 NW2d 266 (1987). Defendant's criminal history is a permissible consideration. *People v Ross*, 145 Mich App 483, 495; 378 NW2d 517 (1985). The trial court noted that defendant had five felony convictions between 1984 and 1991 for forgery, breaking and entering, uttering and publishing, and receiving and concealing. Given defendant's extensive criminal history, particularly regarding crimes involving theft, his sentence was proportionate.

Affirmed. Remanded to circuit court for correction of the presentence report.

/s/ Martin M. Doctoroff

/s/ E. Thomas Fitzgerald

/s/ Michael J. Talbot