

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

BARBARA LYNN LAMB,

Defendant-Appellant.

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UNPUBLISHED

April 30, 1999

No. 207284

Alpena Circuit Court

LC No. 94-004732 FC

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

MEMORANDUM.

In 1994, defendant pleaded guilty to a reduced charge of second-degree criminal sexual conduct involving a minor under the age of thirteen, MCL 750.520c(1)(a); MSA 28.788(3)(1)(a), and she was sentenced to five years' probation with one year in jail. In 1997, she pleaded guilty to violating the terms of her probation by failing to report her true address and failing to register in accordance with the Sex Offender Registration Act, and she was resentenced to five to fifteen years' imprisonment. She now appeals by right, and we affirm.

Defendant first contends that her constitutional right to confront and cross-examine her accusers was violated when the trial court relied upon hearsay testimony to resolve a dispute over the accuracy of allegations of uncharged misconduct in the presentence investigation report. We disagree. See e.g., *People v Ewing (After Remand)*, 435 Mich 443, 450-451; 458 NW2d 880 (1990) (quoting 3 ABA Standards for Criminal Justice (2d ed), Standard 18-6.4(b)); *People v Beard*, 171 Mich App 538, 548; 431 NW2d 232 (1988); *People v King*, 158 Mich App 672, 679; 405 NW2d 116 (1987). Defendant's reliance on cases involving probation violation hearings, rather than sentencing proceedings, is misplaced.<sup>1</sup>

Defendant next challenges the denial of her motion to disqualify the sentencing judge after the judge ordered the probation agent to obtain a police investigation into the disputed allegations of uncharged misconduct in the presentence report. When reviewing a decision on a motion to disqualify a judge, we review the lower court's findings of fact for an abuse of discretion but review de novo the application of facts to relevant law. *Cain v Dep't of Corrections*, 451 Mich 470, 503; 548 NW2d 210 (1996). We find no error here. The sentencing judge acted consistently with MCR 6.425(D)(3)

by directing the probation agent to provide substantiation for the disputed allegations of the presentence report.

Finally, defendant challenges the sufficiency of the hearsay evidence to support the sentencing judge's determination that the allegations of uncharged misconduct in the presentence report are accurate. Again, defendant mistakenly relies on cases involving probation violation proceedings rather than proceedings involving disputed sentencing information. We conclude that the sentencing court's findings are sufficiently supported by the evidence presented at the hearing conducted on the disputed presentence report information.

Affirmed.

/s/ Michael J. Kelly

/s/ Janet T. Neff

/s/ Michael R. Smolenski

<sup>1</sup> While defendant contends that the lower court's findings with regard to the uncharged misconduct affected its determination of defendant's new sentence, defendant does not argue that the lower court relied upon the uncharged conduct as a basis for revoking probation. Cf. *People v Laurent*, 171 Mich App 503; 431 NW2d 202 (1988).