

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

MARVIN GREGORY JUNE,

Defendant-Appellant.

UNPUBLISHED

May 11, 1999

No. 203864

Genesee Circuit Court

LC No. 96-054766 FC

Before: Gage, P.J., and Gribbs and Hoekstra, JJ.

MEMORANDUM.

Defendant pleaded nolo contendere to attempted first-degree criminal sexual conduct, MCL 750.520b(1)(a); MSA 28.788(2)(1)(a); MCL 750.92; MSA 28.287, and was sentenced to forty to sixty months' imprisonment. Defendant appeals as of right. We affirm.

Defendant argues that the trial court abused its discretion in considering several uncharged criminal acts against defendant detailed in the presentence investigation report when fashioning defendant's sentence. Defendant sought to have the information deleted from the report. A trial court may consider the facts underlying uncharged offenses as long as the facts are supported by reliable evidence and the defendant is allowed the opportunity to test the accuracy of those facts. *People v Ewing (After Remand)*, 435 Mich 443, 455 (Brickley, J.), 462-463 (Boyle, J.); 458 NW2d 880 (1990); *People v Lawrence*, 206 Mich App 378, 379; 522 NW2d 654 (1994). At sentencing, defendant challenged the trial court's consideration of several uncharged sexual contacts with other minors on the ground that "[t]here were no other children which were charged." Defendant did not specifically allege that the information contained in the presentence investigation report was inaccurate. He also failed to request an evidentiary hearing. Under these circumstances, defendant has failed to preserve his challenge for appellate review. *Lawrence, supra*, 380.

Although defendant correctly indicates that a trial court may not make an independent finding of guilt and then sentence the defendant on the basis of that finding, our review of the record convinces us that the trial court did not make independent findings of guilt with regard to the uncharged acts and then sentence defendant for those acts. *People v Dixon*, 217 Mich App 400, 410-411; 552 NW2d 663 (1996).

Defendant has also failed to preserve his challenge to the relevancy of a statement appearing in the presentence report which indicated that he failed a polygraph examination. MCR 6.429(C); *People v Bailey (On Remand)*, 218 Mich App 645, 647; 554 NW2d 391 (1996).

Defendant's claim that he is entitled to resentencing before a different judge has been rendered moot. *People v Greenberg*, 176 Mich App 296, 302; 439 NW2d 336 (1989).

Affirmed.

/s/ Hilda R. Gage

/s/ Roman S. Gibbs

/s/ Joel P. Hoekstra