STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

J.D. ROPER,

Defendant-Appellant.

UNPUBLISHED
August 17, 1999

No. 205005
Genesee Circuit Court
LC No. 92-047076 FH

Before: Bandstra, C.J., and Whitbeck and Talbot, JJ.

PER CURIAM.

Defendant appeals as of right from his guilty plea conviction of delivery of 225 grams or more but less than 650 grams of cocaine, MCL 333.7401(2)(a)(ii); MSA 14.15(7401)(2)(a)(ii). On remand from this Court, defendant was sentenced to serve ten to thirty years in prison for his conviction.[1] We affirm defendant's conviction and sentence but remand the matter to the trial court for the correction of defendant's presentence investigation report.

Defendant first argues that his ten year minimum sentence was disproportionately severe. We disagree. Sentencing decisions are subject to review by this Court on an abuse of discretion standard. *People v Milbourn*, 435 Mich 630, 635-636; 461 NW2d 1 (1990). A sentence constitutes an abuse of the trial court's discretion if it violates the principle of proportionality. The principle of proportionality requires sentences to be "proportionate to the seriousness of the circumstances surrounding the offense and the offender." *Id.* at 636.

The statutorily mandated minimum sentence for a conviction of delivery of 225 grams or more but less than 650 grams of cocaine is twenty years. MCL 333.7401(2)(a)(ii); MSA 14.15(7401)(2)(a)(ii). In this case, upon a finding of "substantial and compelling" reasons for a departure from the statutorily prescribed minimum sentence, the trial court sentenced defendant to a minimum term of only ten years' imprisonment. See MCL 333.7401(4); MSA 14.15(7401)(4). Considering the serious nature of the offense, and the fact that defendant had a prior conviction for delivery of cocaine, we hold that the ten-year minimum sentence imposed by the trial court was not disproportionately severe. *Milbourn*, *supra* at 636.

Defendant next argues that he is entitled to have his presentence report corrected, striking information that the trial court indicated it would not consider in sentencing. We agree.

When a defendant claims that a presentence investigation report contains an error, the court may hold an evidentiary hearing to determine the report's accuracy, may accept the defendant's unsworn statement, or may ignore the alleged misinformation when sentencing. See MCR 6.425(D)(3); *People v Brooks*, 169 Mich App 360, 364-365; 425 NW2d 555 (1988). If the trial court indicates that it will strike the challenged information, but does not do so, the defendant is entitled to have the matter remanded for correction. See *People v Paquette*, 214 Mich App 336, 346-347; 543 NW2d 342 (1995). Here, at the adjournment of sentencing, defendant objected to the inclusion of a series of traffic offenses and misdemeanors in the presentence report on the ground that they were not relevant to sentencing. The trial court stated that it would not consider those prior offenses when it sentenced defendant. When defendant was later sentenced, the trial court indicated that it had previously determined that the challenged misdemeanors and traffic offenses should be stricken from the presentence investigation report. On this basis, we conclude that defendant is entitled to have this matter remanded solely for correction of his presentence investigation report. *Paquette, supra* at 346-347. On remand, the trial court shall strike any reference to the challenged misdemeanors and traffic offenses. We do not retain jurisdiction.

Affirmed.

/s/ Richard A. Bandstra
/s/ William C. Whitbeck
/s/ Michael J. Talbot

[1] Defendant was originally sentenced to a term of twenty to thirty years' imprisonment. A prior panel of this Court remanded for resentencing because the trial court incorrectly believed that it had no discretion to depart from the sentence mandated by MCL 333.7401(2)(a)(ii); MSA 14.15(7401)(2)(a)(ii). See *People v Roper*, unpublished memorandum opinion of the Court of Appeals, issued December 6, 1996 (Docket No. 161932).