

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

BRUCE ARTHUR WITKOWSKI,

Defendant-Appellant.

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UNPUBLISHED  
November 2, 1999

No. 212731  
Wayne Circuit Court  
Criminal Division  
LC No. 94-012156

Before: Whitbeck, P.J. and Gribbs and White, JJ.

PER CURIAM.

Defendant Bruce Arthur Witkowski appeals as of right from the sentence imposed on his plea-based conviction of attempted child sexually abusive activity, MCL 750.145c; MSA 28.342a; MCL 750.92; MSA 28.287. We affirm.

I. Basic Facts And Procedural History

Witkowski pleaded nolo contendere to two counts of engaging in child sexually abusive activity, MCL 750.145c; MSA 28.342a; and one count of assault with intent to commit second-degree criminal sexual conduct, MCL 750.520g(2); MSA 28.788(7)(2). The court permitted defendant to withdraw a plea to one count of criminal sexual conduct in the second degree, MCL 750.520c; MSA 28.788(3). Witkowski appealed, and in *People v Witkowski*, unpublished opinion per curiam of the Court of Appeals, issued November 4, 1997 (Docket No. 193315), we affirmed the conviction of assault with intent to commit criminal sexual conduct in the second degree and one conviction of child sexually abusive activity, but vacated the second conviction of child sexually abusive activity, and remanded for further proceedings. On remand, Witkowski pleaded nolo contendere to attempted child sexually abusive activity. The trial court sentenced Witkowski to forty to sixty months in prison, with credit for 865 days.

II. Sentencing Judge

Witkowski argues that he is entitled to resentencing because, on remand, the judge originally assigned to his case did not take his plea and impose sentence, even though the judge was reasonably available. *People v Humble*, 146 Mich App 198, 200; 379 NW2d 422 (1985). We disagree. When the case returned to the trial court on remand, the judge who accepted the original plea was not reasonably available because he had been assigned to the Civil Division of the Wayne Circuit Court. Witkowski did not object to the successor judge taking the plea on remand. *People v Robinson*, 203 Mich App 196, 197-198; 511 NW2d 713 (1993). Therefore, he waived this argument. *Id.*

### III. Reasons For Imposing Sentence

Witkowski argues that he is entitled to resentencing because the trial court did not state its reasons for imposing sentence. We disagree. To facilitate appellate review, the sentencing 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). The trial court stated that it had considered the presentence report, the record, and the statements made at sentencing, and based its sentencing decision on those factors. The consideration of the record necessarily included the statements made at the original sentencing. At the original sentencing, the trial court stated specific reasons for imposing the sentences that it did. The trial court's implicit adoption of those reasons was sufficient. See *People v Alexander-El*, 181 Mich App 575, 576; 449 NW2d 925 (1989).

### IV. Presentence Report

Witkowski argues that he is entitled to resentencing because the presentence report on which the trial court relied contained inaccurate information. We disagree. A defendant is entitled to be sentenced on the basis of accurate information. *People v Lee*, 391 Mich 618, 639; 218 NW2d 655 (1974). The sentencing court has a duty to respond to challenges to the accuracy of information in the report. *People v Sutton*, 158 Mich App 755, 761-762; 405 NW2d 209 (1987). The court may hold an evidentiary hearing to determine the accuracy of the information, accept the defendant's version, or ignore the alleged misinformation when imposing sentence. *People v Pierce*, 158 Mich App 113, 116-117; 404 NW2d 230 (1987).

Witkowski objected to various statements in the presentence report, including statements in the investigator's description of the offense. The trial court made some changes Witkowski requested, and indicated that it would not consider other statements to which he objected. The implication appears to be that there were errors in the presentence report. However, even if any inaccurate information remained in the presentence report after the court ordered it to be redacted, Witkowski has not demonstrated that any allegedly untrue information influenced the trial court's sentencing decision. *Pierce, supra*. Therefore, the sentencing court did not err by relying on the presentence report.

### V. Resentencing

Witkowski argues that he is entitled to resentencing on his convictions of child sexually abusive activity and assault with intent to commit second-degree criminal sexual conduct because he pleaded guilty to acts that are, arguably, no longer unlawful under the redefinition of "erotic nudity" in MCL

750.145c(d); MSA 28.342a(d), effective April 1, 1995. We disagree. MCL 750.145c(d); MSA 28.342a(d), as it read when Witkowski entered his nolo contendere pleas, clearly covered his conduct. He is not entitled to resentencing.

Affirmed.

/s/ William C. Whitbeck

/s/ Roman S. Gibbs

/s/ Helene N. White