

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DENNIS LUCEY,

Defendant-Appellant.

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UNPUBLISHED

November 30, 1999

No. 217339

Wayne Circuit Court

Criminal Division

LC Nos. 89-013418;

89-015115

Before: Jansen, P.J., and Hoekstra and J. R. Cooper\*, JJ.

PER CURIAM.

Defendant appeals as of right from his sentences of sixteen to thirty years in prison imposed on his plea-based convictions of two counts of breaking and entering an occupied dwelling, MCL 750.110; MSA 28.305, and two counts of habitual offender, fourth offense, MCL 769.12; MSA 28.1084. We affirm defendant's sentences, but remand for preparation of a corrected presentence report.

Defendant was originally sentenced to twenty to forty years in prison. In *People v Lucey*, unpublished opinion per curiam of the Court of Appeals, issued October 3, 1991 (Docket No. 129338), another panel of this Court remanded with instructions that the trial court respond to objections made by defendant regarding allegedly inaccurate information contained in the presentence report. On remand, the trial court imposed the same sentences. In *People v Lucey*, memorandum opinion of the Court of Appeals, issued July 12, 1993 (Docket No. 149504), another panel of this Court affirmed the sentences. In *Lucey v Caruso*, No. 96-CV-73041-DT, the United States District Court granted defendant's petition for writ of habeas corpus and ordered him resentenced by a different judge. The trial court imposed concurrent terms of sixteen to thirty years in prison, with credit for 3,224 days.

We affirm defendant's sentences, but remand for preparation of a corrected presentence report. In response to defendant's objection to inclusion in the report of numerous juvenile contacts that did not

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\* Circuit judge, sitting on the Court of Appeals by assignment.

result in an arrest or charge, the trial court indicated that it would give very little consideration to any juvenile record. Defendant's contention that he is entitled to be resentenced because the disputed information influenced the trial court's sentencing decision is not supported by the record; however, by disregarding the information, the trial court effectively found it to be irrelevant. Defendant is entitled to have the information stricken from the report. MCL 771.14(5); MSA 28.1144(5); MCR 6.425(D)(3)(a); *People v Newson (After Remand)*, 187 Mich App 447, 450; 468 NW2d 249 (1991), vacated in part on other grounds, 437 Mich 1054 (1991); *People v Hoyt*, 185 Mich App 531, 534; 462 NW2d 793 (1990). Similarly, defendant is entitled to have any information stricken by the court deleted entirely from the report. *People v Swartz*, 171 Mich App 364, 380-381; 429 NW2d 905 (1988).

A 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's articulation of reasons for imposing the sentence that it did was sufficient. The trial court stated that it had considered the presentence report and the record, and had 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 and on remand, the court stated reasons for imposing the sentences that it did. The trial court's implicit adoption of those reasons was sufficient. *People v Alexander-El*, 181 Mich App 575, 576; 449 NW2d 925 (1989).

Defendant is not entitled to resentencing based on the procedure used to reassign this matter to another judge. Reassignment of a case to an alternate judge is to be by lot "[t]o the extent feasible . . . ." The presiding judge, fulfilling functions assigned by the chief judge, MCR 8.110(B)(2), assigned this matter to the original judge's designated alternate pursuant to the court's administrative order. Such a procedure is permitted by MCR 8.112(B). The reassignment of this matter to the original judge's designated alternate did not violate MCR 8.111(C).

We reject defendant's assertion that he is entitled to resentencing for the reason that the trial court failed to recognize that the decision to impose an enhanced sentence as authorized by MCL 769.12; MSA 28.1084 was discretionary. *People v Bewersdorf*, 438 Mich 55, 66; 475 NW2d 231 (1991). Absent clear evidence that the trial court believed that it lacked discretion, the presumption that the trial court knows the law must prevail. *People v Alexander*, 234 Mich App 665, 674-675; 599 NW2d 749 (1999).

Defendant's sentences are affirmed, and this matter is remanded to the trial court for preparation of a corrected presentence report in accordance with this opinion. We do not retain jurisdiction.

/s/ Kathleen Jansen  
/s/ Joel P. Hoekstra  
/s/ Jessica R. Cooper