

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

WALTER SANDERS,

Defendant-Appellant.

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UNPUBLISHED

December 14, 2001

No. 226579

Kent Circuit Court

LC No. 96-010758-FC

Before: White, P.J., and Talbot and E.R. Post\*, JJ.

MEMORANDUM.

Defendant appeals as of right his resentencing after remand from this Court. We affirm.

In defendant's initial appeal, this Court remanded the matter for resentencing because the thirty to forty year sentence imposed violated the two-thirds rule of *People v Tanner*, 387 Mich 683; 199 NW2d 202 (1972). At resentencing, no updated presentence report was prepared, but the trial court found that defendant's improved prison behavior merited a reduced sentence. Defendant was resentenced to twenty-five to forty years' imprisonment.

A defendant cannot waive the preparation of a presentence report. *People v Brown*, 393 Mich 174, 179; 224 NW2d 38 (1974). A presentence report must be reasonably updated to reflect the particular circumstances of the case and the offender at the time of sentencing. *People v Triplett*, 407 Mich 510, 515; 287 NW2d 165 (1980).

Although a defendant may not waive the preparation of a presentence report, he may waive the right to a reasonably updated presentence report at resentencing. *People v Hemphill*, 439 Mich 576, 582; 487 NW2d 152 (1992). Here, although the original report was not updated, the trial court was informed of defendant's positive prison behavior. The court took that behavior into consideration in resentencing defendant to a lesser term. Defendant was not prejudiced by the failure to prepare an updated report. A remand to prepare a report to reflect

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

circumstances that the trial court already considered would serve no purpose.

Affirmed.

/s/ Helene N. White  
/s/ Michael J. Talbot  
/s/ Edward R. Post