

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DAWN MARIE HOLCOMB,

Defendant-Appellant.

UNPUBLISHED

April 20, 2004

No. 244802

Saginaw Circuit Court

LC No. 94-008872-FH

Before: Cavanagh, P.J., and Murphy and Smolenski, JJ.

MEMORANDUM.

Defendant appeals as of right from a judgment of sentence entered after a probation violation. She was sentenced to forty to sixty months' imprisonment on the underlying plea-based conviction of operating a motor vehicle under the influence of intoxicating liquor, third offense, MCL 257.6256(d). We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

After failing to appear for sentencing following her 1994 guilty plea, defendant was arrested on a bench warrant in 2000 and sentenced to four years probation. One condition of her probation was that she not use alcohol. Defendant's probation was revoked after she consumed alcohol and committed an assault and battery in October 2001.

Defendant first argues that she is entitled to resentencing because the trial court sentenced her to prison without considering a current presentence report. Defendant failed to preserve this issue because she did not raise it before the trial court. Therefore, our review is for plain error affecting defendant's substantial rights. *People v Layher*, 238 Mich App 573, 586-587; 607 NW2d 91 (1999).

MCR 6.445(G) requires that a current presentence report be considered. Defendant has not provided this Court with copies of any presentence reports and there is no evidence in the record that defendant requested that they be provided. However, the transcript of the October 1, 2002 sentencing hearing indicates that the trial court was provided with updated reports dated May 30, 2002, and August 2, 2002. These are identified only as updated reports, but the court inquired whether there were any corrections, alterations or deletions. Defense counsel responded by saying that defendant admitted to consuming vodka, as reported, but that the quantity was less, and noted that defendant's version of what happened was in the report. Accordingly, it

appears that the trial court was provided with updated presentence reports. Defendant has not demonstrated plain error.

Defendant also asserts that the trial court improperly augmented her sentence based on the probation violations and that she was entitled to the same penalty that she would have received at her initial sentencing if she had not been given probation. However, the court was “at liberty to consider defendant’s actions and the seriousness and severity of the facts and circumstances surrounding the probation violation[s] in arriving at the proper sentence to be given.” *People v Williams*, 223 Mich App 409, 411; 566 NW2d 649 (1997), quoting *People v Peters*, 191 Mich App 159, 167; 477 NW2d 479 (1991). We find that the trial court did not abuse its discretion in sentencing defendant as it did. *Williams, supra* at 410.

Affirmed.

/s/ Mark J. Cavanagh
/s/ William B. Murphy
/s/ Michael R. Smolenski