

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

PATRICIA BOLTON DIXON,

Defendant-Appellee.

UNPUBLISHED
November 2, 2004

No. 248619
Kalamazoo Circuit Court
LC No. 99-000906-FH

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

PER CURIAM.

Defendant pleaded guilty to felonious assault, MCL 750.82, and was sentenced to probation. The trial court later revoked probation and sentenced defendant to 1 to 4 years in prison. On defendant's motion, the trial court confessed error in the sentence and resentenced her to two years' probation with the first year in jail. The prosecutor appeals by leave granted. We vacate the amended sentence and reinstate the original sentence imposed following the violation of probation. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant was charged with violating probation because she relapsed and used alcohol, and stabbed her husband. Defendant pleaded guilty to the first charge and the second charge was dismissed. Defendant's admission to violation of probation was sufficient to support the court's decision to revoke probation. *People v Billy Williams*, 66 Mich App 67, 71; 238 NW2d 407 (1975).

If probation is revoked, the court may sentence the defendant "in the same manner and to the same penalty as the court might have done if the probation order had never been made." MCL 771.4. The trial court imposed a prison sentence based on the relapse combined with the stabbing. It later granted resentencing because it had not properly responded to defendant's challenge to the accuracy of the information in the presentence report regarding the stabbing.

We find no error with respect to the trial court's initial decision to order resentencing. Once defendant challenged the accuracy of the information, the trial court had an obligation to respond to that challenge. *People v Spanke*, 254 Mich App 642, 648; 658 NW2d 504 (2003). In responding to the challenge, the trial court "may determine the accuracy of the information, accept the defendant's version, or simply disregard the challenged information." *Id.* If the trial court elects to determine the accuracy of the information, the prosecutor "must prove by a

preponderance of the evidence that the facts are as asserted.” *People v Ratkov (After Remand)*, 201 Mich App 123, 125; 505 NW2d 886 (1993), remanded 447 Mich 984; 525 NW2d 454 (1994). At sentencing, the trial court determined that the information was accurate despite an absence of proofs or stipulation of the parties and based its sentence on that information. A “sentence based on inaccurate information is invalid,” *People v Marcus Harris*, 224 Mich App 597, 600; 569 NW2d 525 (1997), and thus the trial court properly ordered resentencing. *People v Mutchie*, 251 Mich App 273, 274; 650 NW2d 733 (2002).

However, when defendant appeared for resentencing, she effectively withdrew her objection to the accuracy of the presentence report and conceded that the trial court could consider the stabbing incident in determining her sentence. Because the trial court’s failure to properly resolve the challenge to the accuracy of the presentence report with respect to the stabbing incident was the basis on which resentencing had been granted and because defendant no longer challenged the accuracy of that information, there was no challenge for the trial court to resolve. There being no factual dispute to resolve, defendant having consented to the trial court’s consideration of the stabbing incident, defendant’s sentence after revocation of probation was based on accurate information and that sentence was valid. Because the sentence was valid, the trial court could not vacate it and impose a different sentence. MCR 6.429(A); *People v Wybrecht*, 222 Mich App 160, 166-167; 564 NW2d 903 (1997).

We vacate the amended sentence entered on resentencing and reinstate the original sentence imposed after revocation of probation.

/s/ William C. Whitbeck
/s/ Kathleen Jansen
/s/ Richard A. Bandstra