

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JAY FRANCIS RINKE,

Defendant-Appellant.

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UNPUBLISHED

January 24, 2008

No. 271756

Huron Circuit Court

LC No. 05-004469-FH

Before: Kelly, P.J., and Meter and Gleicher, JJ.

GLEICHER, J. (*dissenting*).

I respectfully dissent. The trial court stated that it did not take the challenged information into account when it sentenced defendant. Specifically, the following portion of the colloquy quoted by the majority is neither ambiguous nor vague:

It's not going to change my sentence either whether it is or isn't a conviction, but all the information that I have is that it should be there, even though he denies it. So I'm going to leave it in the report. *It's not gonna have a bearing on my sentence one way or the other.* (Emphasis supplied).

Because the trial court determined that the alleged 1973 CCW conviction would have no bearing on its imposition of sentence, the unambiguous language of MCR 6.425(E)(2) and MCL 771.14(6) obligated the trial court to strike the PSIR's reference to the CCW conviction. "[A] remand for the ministerial task of correcting the presentence report is required." *People v Russell*, 254 Mich App 11, 22; 656 NW2d 817 (2002), rev'd on other grounds 471 Mich 182; 684 NW2d 745 (2004). Consequently, I would remand to the trial court "to correct and edit the presentence report to delete contested facts, not relied on in sentencing, from the presentence report." *People v Carino*, 456 Mich 865-866; 568 NW2d 683 (1997).

/s/ Elizabeth L. Gleicher

