

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

THOMAS LEIGH, III,

Defendant-Appellant.

UNPUBLISHED

September 11, 2008

No. 279202

Wayne Circuit Court

LC No. 06-003231-01

Before: Whitbeck, P.J., and Bandstra and Donofrio, JJ.

PER CURIAM.

Defendant appeals by delayed leave granted the sentence imposed on his plea-based conviction of resisting and obstructing, MCL 750.81d(1). The trial court sentenced defendant as a fourth-habitual offender, MCL 769.12, to eight to 15 years in prison. Because defendant has not shown error with regard to his sentencing we affirm defendant's sentence, but remand only for ministerial correction of defendant's presentence investigation report (PSIR). This appeal has been decided without oral argument pursuant to MCR 7.214(E).

Officers tried to arrest defendant when he reported to his parole office on an outstanding warrant. Defendant, who apparently was armed with a handgun and a knife, struggled with the officers. After defendant was initially subdued, he attacked a corrections officer, injuring her face and body with his head. At some point, he was apparently injured, and was transported to Detroit Receiving Hospital. Defendant allegedly leaped from the examining table, escaped the room, and ran down the hall, but was restrained.

Defendant was charged with resisting and obstructing, felon in possession of a firearm, possession of a firearm during the commission of a felony, and carrying a concealed weapon. Defendant pleaded guilty to resisting and obstructing and to his habitual offender status in return for dismissal of the other charges and a sentence agreement of eight to 15 years in prison. During sentencing, defense counsel moved to strike portions of the "Agent's Description of the Offense" in the PSIR on the grounds that this information pertained to the charges that were being dismissed, and thus were not relevant to sentencing. This information included the fact that defendant had a handgun when he went to meet his parole officer, his threats to the arresting officers, his attack on the corrections officer, and his attempted escape at the hospital. The trial court stated that it was highlighting the sentences to which defendant objected, and would have the section "redone." After the prosecution objected to the deletions, the trial court stated that it would not change the "things that were said by the officer", and that it would look at the Agent's

Description of the Offense and “sort of fine [tune] it.” Most, but not all, of the objected-to sentences were subsequently removed from the updated PSIR.

On appeal, defendant first argues that the PSIR must be again corrected to remove a reference to the specific charges on the initial warrant that led to the officers’ attempt to arrest him, and to remove the allegations that he attacked the corrections officer who was attempting to transport him. We review a sentencing court’s response to a claim of inaccuracy in a presentence report for an abuse of discretion. *People v Spanke*, 254 Mich App 642, 648; 658 NW2d 504 (2003). An abuse of discretion occurs when the trial court chooses an outcome falling outside the range of principled outcomes. *People v Babcock*, 469 Mich 247, 269; 666 NW2d 231 (2003). “Critical decisions are made by the Department of Corrections regarding a defendant’s status based on the information contained in the presentence investigation report. Thus, the presentence investigation report should accurately reflect any determination the sentencing judge has made concerning the accuracy or relevancy of the information contained in the report.” *People v Norman*, 148 Mich App 273, 275; 384 NW2d 147 (1986). MCL 771.14(6) states:

At the time of sentencing, either party may challenge, on the record, the accuracy or relevancy of any information contained in the presentence investigation report. The court may order an adjournment to permit the parties to prepare a challenge or a response to a challenge. If the court finds on the record that the challenged information is inaccurate or irrelevant, that finding shall be made a part of the record, the presentence investigation report shall be amended, and the inaccurate or irrelevant information shall be stricken accordingly before the report is transmitted to the department of corrections.

Similarly, MCR 6.425(E)(2) provides:

If any information in the presentence report is challenged, the court must allow the parties to be heard regarding the challenge, and make a finding with respect to the challenge or determine that a finding is unnecessary because it will not take the challenged information into account in sentencing. If the court finds merit in the challenge or determines that it will not take the challenged information into account in sentencing, it must direct the probation officer to

(a) correct or delete the challenged information in the report, whichever is appropriate, and

(b) provide defendant’s lawyer with an opportunity to review the corrected report before it is sent to the Department of Corrections.

Here, contrary to defendant’s contention on appeal, defendant did not specifically object to the inclusion of the charges contained in the warrant for defendant’s arrest that led to his conviction. Therefore, his argument that the trial court agreed to delete this information is incorrect. The PSIR does state, however, that defendant was found not guilty of these charges. This information, while apparently accurate, is also largely irrelevant to explain the circumstances of defendant’s charges or conviction, and was not used in the trial court’s sentencing decision. Thus, we agree with defendant that this information should be removed from the report.

Regarding the details concerning defendant's assault on the corrections officer, we disagree with defendant's assertion that the trial court specifically decided to remove this portion of the report. The trial court's apparent decision to retain this information did not constitute an abuse of discretion. Unlike the information above, the details of defendant's attack on the corrections officer was directly related to the circumstances of the charges against defendant. It supported the charge of resisting and obstructing, even though that charge could also have been based on any number of defendant's other actions during this protracted encounter. The information was also relevant to explain the Victim's Impact Statement portion of the report. We thus find that defendant is not entitled to removal of this information from the PSIR.

Defendant also argues that his sentence is invalid because the trial court exceeded the sentencing guidelines for his offense, and failed to provide substantial and compelling reasons to support the sentence. See *Babcock, supra* at 255-256, 272. However, our Supreme Court has held that "a sentence that exceeds the sentencing guidelines satisfies the requirements of MCL 769.34(3) when the record confirms that the sentence was imposed as part of a valid plea agreement" even without the "specific articulation of additional 'substantial and compelling' reasons by the sentencing court." *People v Wiley*, 472 Mich 153, 154; 693 NW2d 800 (2005). Moreover, defendant has waived this issue for appeal by specifically agreeing to the sentence imposed. *Id.*

We affirm defendant's sentence, but remand this case for ministerial correction of defendant's presentence investigation report consistent with this opinion. We do not retain jurisdiction.

/s/ William C. Whitbeck
/s/ Richard A. Bandstra
/s/ Pat M. Donofrio