

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

GREGORY MICHAEL SANDERS,

Defendant-Appellee.

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UNPUBLISHED

November 18, 2008

No. 276980

Ingham Circuit Court

LC No. 05-000139-FC

Before: Sawyer, P.J., and Jansen and Hoekstra, JJ.

PER CURIAM.

The people appeal by leave granted from an order of the circuit court granting defendant's motion to amend his presentence investigation report (PSIR). Defendant pleaded guilty to kidnapping, MCL 750.349, and felonious assault, MCL 750.82, and was sentenced to serve concurrent prison terms of 5 to 15 years for kidnapping and 24 months to 4 years for felonious assault. At sentencing, defendant made several objections to information contained in the PSIR and stated that there were "no other changes to the body of the report." After being transferred to the custody of the Michigan Department of Corrections, defendant was labeled a "homosexual predator" and rated as a high security risk because of three statements set forth in his PSIR. Defendant did not object to the three statements at sentencing. After a hearing, the trial court ordered that the statements be deleted from the PSIR. We reverse.

This Court reviews a trial court's decision regarding factual disputes in a PSIR for an abuse of discretion. *People v Spanke*, 254 Mich App 642, 648; 658 NW2d 504 (2003). The trial court has not abused its discretion if it arrives at a "reasonable and principled outcome." *People v Babcock*, 469 Mich 247, 269; 666 NW2d 231 (2003).

The prosecutor argues that defendant waived his right to correct any errors in his PSIR when he failed to object at sentencing. In support, the prosecutor relies on MCL 771.14(6), *People v Lopez (After Remand)*, 202 Mich App 437, 441; 510 NW2d 195 (1993), depublished at 447 Mich 427; 526 NW2d 584 (1994), *People v Sharp*, 192 Mich App 501; 481 NW2d 773 (1992), and *People v Maxson*, 163 Mich App 467; 415 NW2d 247 (1987). MCL 771.14(6) provides as follows:

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.

In *Sharp*, the defendant appealed as of right his plea based convictions. In part, the defendant asserted that the sentencing court failed to respond to his challenges to the accuracy of statements set forth in the PSIR. *Id.* at 503. The defendant had challenged the accuracy of the PSIR in a post-sentencing hearing. *Id.* *Sharp* declined to review the issue, based on its interpretation of the first sentence of MCL 777.15(6) (then MCL 771.14[5]):

In the plain language of the presentence investigation report statute, “[a]t the time of sentencing, either party may challenge, on the record, the accuracy or relevancy of any information contained in the presentence investigation report.” (Emphasis added.) MCR 6.425(D)(2)(b) contains essentially the same language.

Here, defendant did not raise the issue until after sentencing. . . .

To follow defendant’s preferred course would in essence require sentencing judges to try guilty plea cases in post-sentencing proceedings whenever a defendant disputes a victim’s version of events. This we decline to do absent compelling authority. [*Sharp, supra* at 504-505 (citations omitted).]

The *Sharp* Court held that the plain language of MCL 771.14(6) and MCR 6.425(D)(2)(b) requires the defendant to bring a challenge about the accuracy of information contained in the PSIR at the time of sentencing. It further indicated that it was choosing to do so for policy reasons, i.e., to avoid “requir[ing] sentencing judges to try guilty plea cases in post-sentencing proceedings whenever a defendant disputes a victim’s version of events.” *Id.* at 505.

In the case at hand, the trial court specifically indicated that it did not rely on the challenged information when sentencing defendant. Also, the defendant in this case reviewed the PSIR, made several objections to information contained in the report, and affirmatively expressed satisfaction with the rest of the PSIR. The defendant made no objections to the information now being challenged. Accordingly, defendant has waived his right to later object to the information contained in the PSIR.

The prosecutor argues that the statements defendant is now challenging are accurate. Although the statements appear accurate, we need not address this issue because defendant has waived his right to object to the statements.

Because defendant reviewed the PSIR, took the opportunity to make other objections to the PSIR at sentencing, and affirmatively expressed satisfaction with the rest of the report,

defendant waived his right to later object to statements contained in the PSIR. Therefore, the trial court abused its discretion in granting the motion.

Reversed.

/s/ David H. Sawyer

/s/ Kathleen Jansen