

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

GREGORY MICHAEL SANDERS,

Defendant-Appellee.

UNPUBLISHED

November 18, 2008

No. 276980

Ingham Circuit Court

LC No. 05-000139-FC

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

HOEKSTRA, J., (*dissenting*).

Respectfully, I disagree with the majority's holding that the trial court erred in considering defendant's post-sentencing motion to correct errors in the presentence investigation report (PSIR). While I agree that *People v Sharp*, 192 Mich App 50, 504-505; 481 NW2d 773 (1992), shields trial courts from being required to consider post-sentencing challenges to the accuracy of a PSIR, I find no corresponding sword in either the language of MCL 771.14(6)¹ or MCR 6.425(E)(1)(b),² or in the relevant case law, forbidding a trial court from choosing, in its discretion, to address an unpreserved, post-sentencing challenge to the accuracy of a PSIR.

¹ MCL 771.14(6) provides:

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 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.

² MCR 6.425(E)(1)(b) provides in relevant part:

At sentencing, the court must, on the record:

* * *

(continued...)

Further, I disagree with the majority's reliance on waiver. Never before has waiver been utilized to close the trial court's door to a defendant who seeks to correct errors in his PSIR and, in my judgment, this is for good reason. This Court has recognized that, because the Department of Corrections (DOC) makes important decisions regarding a prisoner's status based on the content of a PSIR, the PSIR should contain accurate information. *People v Norman*, 148 Mich App 273, 275; 384 NW2d 147 (1986). Occasionally, the DOC's decisions regarding a prisoner based on the information contained in a PSIR cannot be anticipated at the time of the defendant's sentencing. Here, defendant is not claiming the alleged inaccurate passages resulted in an invalid sentence; rather, he is claiming the inaccurate passages led to a decision by the DOC to label him a sexual predator, a decision unforeseen at the time of sentencing. Consequently, in the absence of clear authority precluding a trial court from addressing an unpreserved, post-sentencing challenge to a PSIR, and in light of the post-sentencing importance of the PSIR, I would hold that the trial court had discretion to consider defendant's motion to correct errors.

Plaintiff also argues that the trial court erred in granting defendant's motion to correct errors because the stricken information accurately reflected the testimony at trial and MCR 6.425(A)(2) required the information to be included in the PSIR. This Court reviews for an abuse of discretion a trial court's ruling on a challenge to the accuracy of a PSIR. *People v Uphaus (On Remand)*, 278 Mich App 174, 181; 748 NW2d 899 (2008).

Here, the trial court ordered stricken from the PSIR as inaccurate three passages that related to defendant's acts of stripping the victim and attempting to penetrate the victim's anus with a shotgun or broomstick. The passages, with the exception of the passage stating that defendant's actions were done for the purpose of humiliating the victim, reflected what the probation officer had been told by the prosecution about the victim's trial testimony and by the co-defendant. The prosecution's statements regarding the victim's trial testimony accurately reflected the testimony given by the victim at trial,³ and nothing in the record suggests the probation officer inaccurately summarized the codefendant's statement. The record does not, however, affirmatively support that defendant intended to humiliate the victim. Accordingly, the trial court did not abuse its discretion in striking the passage regarding defendant's attempt to humiliate the victim. But, in all other respects, I would conclude the trial court abused its discretion in granting defendant's motion to correct errors. Further, even if not relied upon by the trial court in fashioning defendant's sentence, the passages were required to be included in the PSIR by MCR 6.425(A)(2).⁴ Without these passages, the PSIR is not complete, and as noted *supra*, the PSIR is used for purposes other than sentencing by the DOC.

(...continued)

(b) give each party an opportunity to explain, or challenge the accuracy or relevancy of, any information in the presentence report, and resolve any challenges in accordance with the procedure set forth in subrule (E)(2).

³ After the victim testified, defendant opted to plead guilty to kidnapping and felonious assault.

⁴ MCR 6.425(A)(2) provides:

(continued...)

I would affirm the trial court's order as to the passage regarding defendant's attempt to humiliate the victim, but reverse as to the other passages.

/s/ Joel P. Hoekstra

(...continued)

(A) Prior to sentencing, the probation officer must investigate the defendant's background and character, verify material information, and report in writing the results of the investigation to the court. The report must be succinct and, depending on the circumstances, include:

* * *

(2) a complete description of the offense and the circumstances surrounding it.