

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

SCOTT RICHARD HOLLOWAY,

Defendant-Appellant.

UNPUBLISHED

June 16, 2009

No. 286368

Livingston Circuit Court

LC Nos. 05-015374-FH

05-015440-FH

Before: O’Connell, P.J., and Bandstra and Donofrio, JJ.

PER CURIAM.

Defendant appeals by delayed leave granted the sentences imposed on his plea-based convictions. In Docket No. 05-015374-FH, defendant pleaded no contest to possession of controlled substance analogues, MCL 333.7403(2)(b), and possession of marijuana, MCL 333.7403(2)(d). In Docket No. 05-015440-FH, defendant pleaded no contest to three counts of felon in possession of a firearm, MCL 750.224f, and one count of possession of a narcotic/cocaine, MCL 333.7403(2)(a)(v). Following a probation revocation hearing, the trial court sentenced defendant to concurrent prison terms of two to ten years for the felon in possession convictions, and to two to eight years for his narcotic possession conviction. Because the trial court utilized appropriate information in its sentencing of defendant after revocation of probation, we affirm. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

Initially, the trial court sentenced defendant to three years’ probation, with the first year in jail, for all the above offenses. During sentencing, defendant challenged a number of items in the presentence investigation report (PSIR), including various statements in the report that intimated that defendant might be involved in narcotics trafficking. The trial court ordered the PSIR modified to indicate that defendant denied that he sold narcotics, but denied defendant’s request to remove the information.

Subsequently, defendant was sentenced in an unrelated third drunk driving charge in Clinton County. Apparently attached to the PSIR for that offense was the PSIR prepared for defendant’s Livingston County offenses. The Clinton Circuit Court entered a stipulated order directing the Department of Corrections (DOC) to change the PSIR to remove the challenged information. The DOC was directed to “remove and discard all copies” of the original report and not to use “any information” in the original PSIR “for any purpose.”

Defendant subsequently pleaded guilty to violating his probation in the instant cases by using alcohol and cocaine. During resentencing on his initial convictions, defendant did not challenge the guidelines scoring. Nor did he again challenge the statements in the PSIR, which according to the copy furnished to this Court, apparently remained unchanged apart from the trial court's initial corrections. Instead, defendant challenged additional alleged inaccuracies in the probation violation report concerning his activities following his conviction. The trial court held that, "without any additional specifics" it would leave the supplemental report as written.

Defendant subsequently moved to correct his "invalid sentence" in part on the ground that the Livingston County PSIR continued to contain the information that was stricken by the Clinton County court. During a hearing, the trial court found that it would not allow defendant to use the Clinton County ruling to collaterally attack its prior determination. After considering defendant's remaining issue, the trial court denied defendant's motion for resentencing.

On appeal, defendant challenges the trial court's decision to not follow the Clinton Circuit court's order and strike the language from the PSIR. He then argues that, because this information should have been stricken, he is entitled to resentencing since the trial court relied on inaccurate information in determining his sentence. See MCL 769.34(10).

We review for an abuse of discretion a trial court's response to a claim of inaccuracies in a defendant's PSIR. *People v Spanke*, 254 Mich App 642, 648; 658 NW2d 504 (2003). We review issues of law de novo. *People v Grant*, 470 Mich 477, 484-485; 684 NW2d 686 (2004).

Essentially, defendant appears to argue that something akin to the law of the case doctrine should have prevented the trial court from refusing to redact the PSIR during resentencing to comply with the actions taken by the Clinton County court in the unrelated criminal case. However, defendant is mistaken. "The law of the case doctrine holds that a ruling by an appellate court on a particular issue binds the appellate court and all lower tribunals with respect to that issue. Thus, a question of law decided by an appellate court will not be decided differently on remand or in a subsequent appeal in the same case." *Ashker v Ford Motor Co*, 245 Mich App 9, 13; 627 NW2d 1 (2001) (citations omitted). Defendant has not presented anything to suggest that the doctrine is applicable here.

Defendant's reliance on MCR 2.613(B) is also misplaced. MCR 2.613(B) provides that "[a] judgment or order may be set aside or vacated, and a proceeding under a judgment or order may be stayed, only by the judge who entered the judgment or order, unless that judge is absent or unable to act." However, accepting for the sake of argument defendant's questionable contention that this court rule can be applicable in separate criminal transactions in differing counties, see e.g., *Huber v Frankenmuth Mut Ins Co*, 160 Mich App 568, 572-574; 408 NW2d 505 (1987), defendant cannot show he is entitled to relief. Were this doctrine applicable to the instant case, it should have instead precluded the Clinton Circuit judge from issuing the stipulated order in the first place because it, in effect, set aside the trial court's initial order to leave the material in the PSIR. Nor is defendant's resentencing after his probation violation a collateral proceeding since it is a sentencing on the underlying criminal conviction. See MCL 771.4; *People v Hendrick*, 472 Mich 555, 562-563; 697 NW2d 511 (2005). Therefore, we conclude that defendant has not demonstrated that the trial court was obliged to follow the Clinton Circuit Court's order deleting this information from the PSIR instead of its own earlier decision to not redact this material.

Furthermore, defendant does not discuss on appeal how the challenged information is inaccurate. When a defendant is resentenced for a felony conviction, the sentencing court must utilize a reasonably updated presentence report. *People v Triplett*, 407 Mich 510, 511, 515; 287 NW2d 165 (1980). This occurred in the instant case. Defendant was provided the ability to revisit this issue during resentencing, but chose to not contest the accuracy of the statements in the initial PSIR or present facts showing how those statements, or the statements in the probation report, were inaccurate. Nor has he now done so. Under the circumstances, we conclude that defendant has not shown that he is entitled to resentencing due to the trial court's reliance on inaccurate information.

Affirmed.

/s/ Peter D. O'Connell
/s/ Richard A. Bandstra
/s/ Pat M. Donofrio