

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

MANUEL MELVIN CAVASOS,

Defendant-Appellant.

UNPUBLISHED

December 22, 2009

No. 288590

Kent Circuit Court

LC No. 08-004396-FC

Before: Murphy, C.J., and Jansen and Zahra, JJ.

PER CURIAM.

Defendant appeals by right following a jury trial conviction for felon in possession of a firearm, MCL 750.224f.¹ We affirm.

Defendant's sole argument on appeal is that his presentence investigation report (PSIR) should be corrected so that an accurate version devoid of contested material is on record with the Department of Corrections (DOC). In a post-sentencing motion, defendant asserted that the PSIR contains references to his gang involvement, despite a complete absence of any record evidence of gang involvement and the trial court's indication that it would not consider the allegations of gang involvement when fashioning defendant's sentence. Defendant also asserted that the PSIR contains repeated references to a "robbery" and a "victim" despite the fact that the jury acquitted him of armed robbery. The trial court provided partial relief, and ordered that all references to current gang involvement be removed from the PSIR. However, the court denied defendant's request concerning the notations to a robbery and reference to complainant Ricky Vaughn as a victim. Defendant continues to challenge the inclusion of the latter material.

A sentencing court's response to a claim of inaccuracies in a PSIR is reviewed for an abuse of discretion. *People v Spanke*, 254 Mich App 642, 648; 658 NW2d 504 (2003). A PSIR is presumed accurate and may be relied on by the trial court unless effectively challenged by the defendant. *People v Grant*, 455 Mich 221, 233-234; 565 NW2d 389 (1997); *People v Callon*, 256 Mich App 312, 334; 662 NW2d 501 (2003).

¹ Defendant was acquitted of charges of armed robbery and possession of a firearm during the commission of a felony.

In *Spanke, supra* at 648-649, this Court held:

The sentencing court must respond to challenges to the accuracy of information in a presentence report; however, the court has wide latitude in responding to these challenges. The court may determine the accuracy of the information, accept the defendant's version, or simply disregard the challenged information. Should the court choose the last option, it must clearly indicate that it did not consider the alleged inaccuracy in determining the sentence. If the court finds the challenged information inaccurate or irrelevant, it must strike that information from the PSIR before sending the report to the Department of Corrections. [Citations omitted.]

Similarly, MCL 771.14(6) requires that inaccurate or irrelevant information be stricken from a PSIR, whereas MCR 6.425(E)(2) requires correction or striking if a challenge is found to be meritorious or if the court decides to disregard the challenged information.

Here, defendant challenges the inclusion of references to the robbery that resulted in acquittal. He also challenges the report's use of "victim" to describe Vaughn because, defendant reasons, without a robbery, there can be no victim.

However, while defendant argues that he did not rob Vaughn, defendant has not shown that the actual information in the report is inaccurate. Rather, he objects to its inclusion simply because he was acquitted of the charge. Defendant's objection is without merit. The agent's description of the offense does not relate Vaughn's statements as established facts, but sets forth the facts underlying the officers' response to the scene, as well as a description of the suspect. The account also provides Vaughn's statement of what occurred. The agent's description explicitly states that Vaughn "alleged" that defendant robbed him. The information was not irrelevant or inaccurate. It was supported by the victim's trial testimony as well as that of the investigating officers and formed the basis for the charges on which defendant was tried.

Additionally, because defendant's PSIR description of the offense contains an assertion by defendant that Vaughn actually robbed defendant, a more thorough version of complainant's statement was necessary to give a complete picture of the incident. We note that MCR 6.425(A)(2) speaks of the PSIR containing "a complete description of the offense and the circumstances surrounding it[.]" Further, the report clearly indicates that defendant was acquitted of robbery and felony-firearm. Moreover, in fashioning an appropriate sentence, a court may consider evidence offered at trial, "including other criminal activities established even though the defendant was acquitted of the charges[.]" *People v Compagnari*, 233 Mich App 233, 236; 590 NW2d 302 (1998).

We find that the trial court did not abuse its discretion in refusing to redact the PSIR as requested by defendant.

Affirmed.

/s/ William B. Murphy
/s/ Kathleen Jansen
/s/ Brian K. Zahra