STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED March 15, 2016
v	No. 324575 Oakland Circuit Court
EUGENE BROWN, JR., Defendant-Appellant.	LC No. 2013-246919-FH

Before: RONAYNE KRAUSE, P.J., and JANSEN and STEPHENS, JJ.

PER CURIAM.

Defendant was charged with second-degree fleeing and eluding, MCL 257.602a(4), operating a motor vehicle while impaired (OWI), second offense, MCL 257.625(1) and (9)(b), and operating a motor vehicle with a suspended license, second offense, MCL 257.904(3)(b). Defendant pleaded guilty to those charges and was sentenced to 6 to 20 years' imprisonment for second-degree fleeing and eluding, 150 days in jail with credit for 150 days for OWI, and 150 days in jail with credit for 150 days for operating a motor vehicle with a suspended license.[1]

Defendant filed a motion for resentencing arguing that the trial court improperly scored Offense Variable (OV) 13 based on insufficient information in his Presentence Investigation Report (PSIR), and that Prior Record Variable (PRV) 3 and PRV 4 were improperly scored. After the trial judge denied that motion, defendant filed a delayed application for leave to appeal with this Court, which was subsequently denied.[2] Defendant then filed an application for leave to appeal in the Michigan Supreme Court. In lieu of granting defendant's application for leave to

[1] See *infra* note 5 for a discussion of defendant's habitual offender sentence enhancement. Defendant's judgment of sentence reflects the fact that he was a fourth habitual offender, MCL 769.12, but his sentencing guidelines range was calculated for a third habitual offender, MCL 769.11. As discussed in further detail below, defendant's sentencing guidelines range should have been calculated for a fourth habitual offender.

[2] *People v Brown*, unpublished order of the Court of Appeals, entered December 29, 2014 (Docket No 324575).

appeal, our Supreme Court remanded the matter to this Court for consideration as on leave granted.[3] We affirm defendant's convictions, but remand for resentencing.

Defendant argues that the trial court erred in determining that he waived his challenge to the scoring of PRV 3 and PRV 4. We agree.

MCR 6.429(C) provides:

> A party shall not raise on appeal an issue challenging the scoring of the sentencing guidelines or challenging the accuracy of information relied upon in determining a sentence that is within the appropriate guidelines sentence range unless the party has raised the issue at sentencing, in a proper motion for resentencing, or in a proper motion to remand filed in the court of appeals.

Similarly, MCL 769.34(10) reads, in relevant part:

> A party shall not raise on appeal an issue challenging the scoring of the sentencing guidelines or challenging the accuracy of information relied upon in determining a sentence that is within the appropriate guidelines sentence range unless the party has raised the issue at sentencing, in a proper motion for resentencing, or in a proper motion to remand filed in the court of appeals.

Our Supreme Court has interpreted this provision as directions regarding "*how* a party must preserve a challenge to a sentence that is within the appropriate guidelines sentence range[.]" *People v Kimble*, 470 Mich 305, 311; 684 NW2d 669 (2004). Thus, the statute clearly provides "a defendant with three separate opportunities to raise a scoring error: at sentencing, in a proper motion for resentencing, or in a proper motion to remand filed in this Court." *People v Hershey*, 303 Mich App 330, 353; 844 NW2d 127 (2013). In *Hershey*, this Court clarified that the defendant did not waive a challenge to the scoring of OV 16 and OV 19 since the defendant did not " 'clearly express[] satisfaction with a trial court's decision' " when the defendant and his counsel indicated that they did not have any additions or corrections to the PSIR. *Id*. at 351-352 (citation omitted). Here, defendant's sentence was within the guidelines range, and he raised the scoring errors in a proper motion for resentencing. Neither defendant nor his defense attorney clearly expressed satisfaction with the trial court's assessment of points for PRV 3 and PRV 4. Accordingly, his scoring objections were not waived, and he properly preserved the issue. See *id*. at 351-353.

Defendant argues that PRV 3 and PRV 4 were improperly scored and that he is entitled to resentencing because those scoring errors affected his sentencing guidelines range. We agree. The prosecutor concedes that PRV 3 and PRV 4 were improperly scored, but argues that the improperly assessed points under PRV 3 and PRV 4 were offset by an error in the scoring of PRV 5, eliminating the necessity for resentencing. We disagree.

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[3] *People v Brown*, 498 Mich 864 (2015).

"A challenge to a sentence that is within the guidelines sentence range is preserved when it is raised at sentencing, in a motion for resentencing, or in a motion to remand filed in the Court of Appeals." *People v Loper*, 299 Mich App 451, 456; 830 NW2d 836 (2013). Again, defendant's sentence was within the guidelines, and he raised the scoring errors in a motion for resentencing. Accordingly, the issue was preserved, not waived. See *id*. A trial court's "factual determinations are reviewed for clear error and must be supported by a preponderance of the evidence. Whether the facts, as found, are adequate to satisfy the scoring conditions prescribed by statute . . . is a question of statutory interpretation, which an appellate court reviews de novo." *People v Hardy*, 494 Mich 430, 438; 835 NW2d 340 (2013) (citations omitted).

Defendant was assessed 10 points under PRV 3. Ten points are properly assessed under PRV 3 where a defendant has "1 prior high severity juvenile adjudication." MCL 777.53(1)(c). When scoring PRV 3, a prior high severity juvenile adjudication includes "a juvenile adjudication for conduct that would be . . . [a] felony under a law of the United States or another state corresponding to a crime listed in offense class M2, A, B, C, or D." MCL 777.53(2)(b). According to defendant's PSIR, defendant has five juvenile adjudications: two "unknown/dismissed" charges, retail fraud of less than $100, "Breaking and Entering W/O Intent," and violation of probation/truancy/failure to report. The author of the PSIR identified "Breaking and Entering W/O Intent," as a "Prop/D" offense. However, while breaking and entering *with* intent is a class D felony, MCL 750.110; MCL 777.16f, breaking and entering *without* intent is a misdemeanor, MCL 750.115. Therefore, the existing record does not show a prior high-severity juvenile adjudication that could justify the 10-point score under PRV 3, and PRV 3 was therefore improperly scored.

Defendant was assessed five points under PRV 4. PRV 4 directs the trial court to score points for a defendant's prior low severity juvenile adjudications. MCL 777.54(1). Five points is appropriate where "[t]he offender has 2 prior low severity juvenile adjudications." MCL 777.54(1)(d). A prior low severity juvenile adjudication is:

> a juvenile adjudication for conduct that would be any of the following if committed by an adult, if the order of disposition was entered before the sentencing offense was committed:
>
> (a) A crime listed in offense class E, F, G, or H.
>
> (b) A felony under a law of the United States or another state corresponding to a crime listed in offense class E, F, G, or H.
>
> (c) A felony that is not listed in offense class M2, A, B, C, D, E, F, G, or H and that is punishable by a maximum term of imprisonment of less than 10 years.
>
> (d) A felony under a law of the United States or another state that does not correspond to a crime listed in offense class M2, A, B, C, D, E, F, G, or H and that is punishable by a maximum term of imprisonment of less than 10 years. [MCL 777.54(2).]

Defendant's PSIR shows only one prior low severity juvenile adjudication, for retail fraud over $100, which is noted as a class G offense. Thus, defendant's proper score for PRV 4 was two points, MCL 777.54(1)(e) (where "the offender has 1 prior low severity juvenile adjudication"), and the trial court therefore erred by scoring five points under PRV 4.

Defendant was assessed zero points under PRV 5. However the prosecutor argues on appeal that 15 points was appropriate. PRV 5 should be scored at 15 points when "[t]he offender has 5 or 6 prior misdemeanor convictions or prior misdemeanor juvenile adjudications." MCL 777.55(1)(b). The phrase "prior misdemeanor conviction" refers to "a conviction for a misdemeanor under a law of this state, a political subdivision of this state, another state, a political subdivision of another state, or the United States if the conviction was entered before the sentencing offense was committed." MCL 777.55(3)(a). However, for purposes of PRV 5, not all prior misdemeanor convictions may be counted when determining how many prior misdemeanor convictions a defendant has. MCL 777.55(2). Specifically, except as provided in MCL 777.55(2)(b), which does not apply in this case, a prior misdemeanor conviction may be counted "only if it is an offense against a person or property, a controlled substance offense, or a weapon offense." MCL 777.55(2)(a).

The prosecutor argues that defendant's prior juvenile misdemeanor for breaking and entering without intent, his three prior adult drug violations, and his two prior drug paraphernalia convictions qualify for scoring under PRV 5. Defendant agrees that the prior juvenile misdemeanor adjudication for breaking and entering without intent could be properly scored under PRV 5, which would mean assessment of two points for PRV 5 is proper. See MCL 777.55(1)(e). However, defendant argues that the drug charges could have been ordinance violations and are not scorable under PRV 5. As a result, defendant argues that the PSIR provides no basis for assuming that the five drug convictions are for misdemeanors and, therefore, scorable.

If the prosecution is correct, any error in the trial court's scoring was harmless as it did not affect defendant's ultimate PRV score,[4] and therefore, did not alter the appropriate guidelines range. On the other hand, if defendant is correct, resentencing would be necessary, as defendant's ultimate PRV score would be affected, and the sentencing guidelines range would be altered. See *People v Francisco*, 474 Mich 82, 89 n 8; 711 NW2d 44 (2006) (finding "[w]here a scoring error does not alter the appropriate guidelines range, resentencing is not required"); *People v Stevens*, 306 Mich App 620, 628; 858 NW2d 98 (2014) (finding that an error in the scoring of PRV 5 did not require resentencing "because the change to defendant's PRV score does not alter the appropriate guidelines range").

[4] Deducting the 10 improperly assessed points under PRV 3 and the three improperly assessed points under PRV 4 would reduce defendant's PRV total from 85 to 72 points, the PRV level would change from F to E, and the guidelines range would change. MCL 777.65. However, adding the 15 points for PRV 5 would increase defendant's PRV total to 87, the PRV level would change back to F, and defendant's guidelines range would remain the same. See *id*.

Because the PSIR does not provide citations to the specific drug offenses that defendant was charged with, there is no way to determine from the record that they are misdemeanor offenses rather than ordinance violations, and the PSIR, therefore, does not establish that a 15 point score under PRV 5 is appropriate. Furthermore, as noted by defendant, the PSIR lists the presence of defense counsel as "unknown" for four of the five drug offenses, which further indicates that the trial court properly assessed zero points for PRV 5. See *People v Alexander (After Remand)*, 207 Mich App 227, 229-230; 523 NW2d 653 (1994) (explaining that a juvenile adjudication may not be considered when scoring the prior record variables if the juvenile adjudications was obtained in violation of the right to counsel). There was no hearing on the issue, and the prosecution did not put forth evidence indicating that defendant had the benefit of counsel or waived his right to counsel. See *People v Carpentier*, 446 Mich 19, 31; 521 NW2d 195 (1994) (noting that once a defendant satisfies his initial burden to show that his conviction was obtained without the benefit of counsel or a proper waiver of the right to counsel, the burden shifts to the prosecution to establish the validity of the prior conviction during a hearing).

As indicated in the PSIR, prior adult offense number 7 of 13 involved a final charge of possession of drug paraphernalia and a conviction, and defendant was represented by counsel with regard to the conviction. As this Court held in *Stevens*, a misdemeanor conviction for possession of drug paraphernalia may be counted under PRV 5. See *Stevens*, 306 Mich App at 627-628. If this offense is counted in addition to the breaking and entering without intent juvenile adjudication, then defendant would have two prior misdemeanor convictions or misdemeanor juvenile adjudications, for which five points would be assessed under PRV 5. See MCL 777.55(1)(d). This would raise the PRV level back to F. However, defendant argues that the offense was actually an ordinance violation, rather than a misdemeanor conviction, and as noted above, there is no way to determine on the record whether this assertion is true. Because defendant did not have the need to raise this particular challenge during his sentencing, as PRV 5 was scored at zero points, we conclude that remand for resentencing is required. During resentencing, the trial court must determine how many points shall be assessed for PRV 5, considering defendant's challenges to the prior offenses that the prosecution argues should be considered in scoring PRV 5. The trial court shall give defendant the opportunity to challenge the accuracy of the PSIR with regard to the prior offenses that the prosecution argues should be considered under PRV 5.[5] See *Stevens*, 306 Mich App at 628.

[5] Defendant's Judgment of Sentence states that defendant's sentence was enhanced pursuant to MCL 769.13 due to his fourth habitual offender status. However, at sentencing, the trial judge indicated that he enhanced defendant's sentence due to his status as a third habitual offender, and defendant's sentencing guidelines were calculated as a third habitual offender, MCL 769.11. On appeal, the prosecutor argues that defendant should be resentenced as a fourth habitual offender as he acknowledged the validity of all prior convictions at his plea hearing and, although the trial prosecutor expressed confusion regarding whether defendant's previous fleeing and eluding charge could be used for habitual enhancement, there was nothing precluding it. We agree. Enhancement under MCL 769.12 is only precluded when the underlying statute prohibits the same felony enhancing the underlying charge from being used for habitual offender purposes. See MCL 769.12(3). However, MCL 257.602a does not preclude further enhancement. As a

Defendant also argues that after he disputed the accuracy of the armed robbery charge contained in his PSIR, the trial judge erred by relying on the armed robbery allegation itself as proof of the criminal behavior necessary to score OV 13 and denying him a hearing to test the accuracy of that information. We disagree.

"A challenge to the validity of information contained in the PSIR may be raised at sentencing, in a proper motion for resentencing, or in a proper motion to remand." *People v Lloyd*, 284 Mich App 703, 706; 774 NW2d 347 (2009). Defendant filed a proper motion for resentencing making the same arguments he now makes on appeal. Thus, this issue is preserved. This Court reviews a sentencing court's response to a claim of inaccuracies in the presentence investigation report for an abuse of discretion. *People v Waclawski*, 286 Mich App 634, 689; 780 NW2d 321 (2009). "An abuse of discretion occurs when the trial court chooses an outcome falling outside the range of principled outcomes." *People v Kosik*, 303 Mich App 146, 154; 841 NW2d 906 (2013).

A defendant has a due-process right to be sentenced through the use of accurate information, *People v Daniels*, 192 Mich App 658, 675; 482 NW2d 176 (1991), and "a sentence is invalid if it is based on inaccurate information," *People v Miles*, 454 Mich 90, 96; 559 NW2d 299 (1997). Before a person convicted of a felony is sentenced, the probation officer must prepare a written presentence report for the court's use. MCL 771.14(1); MCR 6.425(A); *People v Johnson*, 203 Mich App 579, 587; 513 NW2d 824 (1994). The purpose of the presentence report is to give the sentencing court as much information as possible so that the sentence can be tailored to both the offense and the offender. *Miles*, 454 Mich at 97. The information in the PSIR is presumed to be accurate, *People v Grant*, 455 Mich 221, 233-234; 565 NW2d 389 (1997), but at sentencing, either party may challenge the accuracy or relevancy of any information contained in the report, MCL 771.14(6); MCR 6.425(E)(1)(b); *Lloyd*, 284 Mich App at 705.

The defendant has the burden of going forward with an effective challenge to the accuracy or relevancy of any information. *Lloyd*, 284 Mich App at 705. Upon assertion of a challenge to the factual accuracy of information, a court has a duty to resolve the challenge. *Id*. However, the court has wide latitude in selecting its response. *People v Spanke*, 254 Mich App 642, 648; 658 NW2d 504 (2003). It may "determine the accuracy of the information, accept the defendant's version, or simply disregard the challenged information." *Id*. If the court finds that the challenged information is inaccurate or irrelevant, that finding must be made part of the record, and the information must be corrected or stricken from the report. MCL 771.14(6); MCR 6.425(E)(2)(a); *Hoyt*, 185 Mich App at 535.

Under MCL 777.43, the trial court must score points under OV 13 on the basis of a defendant's felonious acts that constitute a continuing pattern of criminal behavior. If the sentencing offense was part of a pattern of felonious criminal activity involving three or more crimes against a person, the trial court must score OV 13 at 25 points. MCL 777.43(1)(c). If there was no pattern of felonious criminal activity, the trial court must score OV 13 at zero

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result, since we are remanding for resentencing, defendant shall be sentenced as a fourth habitual offender on remand, MCL 769.12.

points. MCL 777.43(1)(g). When determining the appropriate points under OV 13, "all crimes within a 5-year period, including the sentencing offense, shall be counted regardless of whether the offense resulted in a conviction." MCL 777.43(2)(a).

The second-degree fleeing and eluding conviction in the case at issue constituted a qualifying felony for scoring under OV 13. Additionally, defendant's PSIR indicated that he had previously been charged with two other felonies in the relevant five year period that could be used to score OV 13: an armed robbery that occurred on January 11, 2010, and an unarmed robbery that occurred on January 12, 2010. At his original sentencing, defendant objected to the accuracy of the armed robbery charge. Defendant claimed that the armed robbery charge and the unarmed robbery charge stemmed from one criminal offense. Referring to the armed robbery charge, defense counsel argued that defendant was not "even involved in that type of crime" and that the charge was the result of "mistaken identity." Defense counsel explained that while defendant was originally charged with armed robbery, the prosecution realized that they had "incorrectly charged him," and had dismissed the armed robbery charge before charging him with the correct charge of unarmed robbery.

The court noted that the PSIR was unclear, but that the two different offense dates for the armed robbery and unarmed robbery charges made it seem that there were two separate offenses. The court determined that "unless there is information to conclusively establish that" the two charges were the result of one offense, and "unless the record clearly shows that this is not two separate offenses occurring two separate dates with two separate behaviors," the court would consider both offenses in sentencing. The court stated that "merely because the defendant says it wasn't me and I should never have been charged does not rise to being conclusive." However, because the outcome of the dispute over the accuracy of the armed robbery charge would have a significant difference on the scoring of the guidelines, the court adjourned the sentencing in order to give defendant an opportunity to investigate the armed robbery charge and provide evidence of his claims.

After a two week adjournment, defendant appeared again to be sentenced. Defense counsel stated that she found no conclusive evidence to support defendant's claims disputing the armed robbery charge and that "the notes [that defense counsel read] and the information that [she] was able to receive did not support [defendant's argument that it was one offense], but it did not dispute it." Defense counsel stated that, while the fact that the armed robbery charge was dismissed is "very telling," "there is nothing in the record that shows one way or the other that what [defendant] is asserting is accurate." While defense counsel could not effectively challenge the accuracy of the information in the PSIR, she still asked that the court not use the armed robbery to score OV 13. However, the court determined that it was "satisfied from reviewing the report from probation dated December 13th, 2013, that the scoring of the January 12, 2010 incident that's reflected in the PSI is appropriate in this case," and so scored OV 13 using the armed robbery charge.

At the hearing for defendant's motion for resentencing, the court elaborated on the information it relied upon in determining that the armed robbery charge in defendant's PSIR was accurate. The court explained for the record that the probation department had provided a memorandum that indicated that defendant's armed robbery and unarmed robbery charges were "listed as separate arrest[s] in the Defendant's criminal history," and that the armed robbery and

unarmed robbery cases were listed under separate lower court docket numbers. Moreover, the court stated that the memorandum further outlined that a review of defendant's parole records provided the factual basis of those charges. First, the memorandum indicated that police records establish that on January 11, 2010, defendant stole a purse from a woman at 7701 East Seven Mile Road after making a pointing motion with his hand in his pocket. Second, police records establish that on January 12, 2010, defendant stole money from a man in a Valero Gas Station at 3640 East McNichols in Detroit.

The court explained that defendant's trial counsel had also received a copy of the probation department memorandum and had concluded that the armed robbery and unarmed robbery charges were in fact two separate offenses, contrary to what defendant claimed. Thus, the court stated that at sentencing, trial counsel had changed her argument from claiming that the armed robbery and unarmed robbery charges arose from the same offense to arguing that the armed robbery charge was "charged erroneously." Thus, although defendant still disputed the accuracy of the armed robbery charge in the PSIR when faced with the probation department memorandum, the court concluded that it was satisfied that the probation department memorandum had established by a preponderance of the evidence that the armed robbery and unarmed robbery charges were separate offenses, and that "the charge was appropriately considered and it was appropriately scored."

Although trial counsel was unable to substantiate defendant's claim regarding his armed robbery charge, defendant now argues that the information contained in the PSIR and probation department memorandum was insufficient to allow the trial judge to conclude, by a preponderance of evidence, that defendant committed armed robbery. Defendant argues that because he disputed the facts underlying the unproved charge, and because a guidelines score based on an unproved factual assertion would deny him his due-process rights, he was entitled to a hearing to determine whether the facts were accurate. Thus, defendant argues that because he was not provided a hearing, the 25-point score for OV 13 cannot stand.

However, contrary to defendant's arguments, his challenge to the accuracy of the armed robbery charge in the PSIR was not effective, and the trial court did not abuse its discretion by declining to grant a hearing on the accuracy of the information or change the PSIR. While defendant was free to challenge the accuracy of the PSIR at sentencing, he had the burden of going forward with an effective challenge. See *Grant*, 455 Mich at 233-234. The information in the PSIR is presumed to be accurate, and the defendant cannot overcome that presumption, or sustain his burden of bringing an effective challenge to the information, simply by making allegations. Instead, a defendant must support any challenge to the accuracy of the information in the PSIR with evidence. See *People v Lucey*, 287 Mich App 267, 277; 787 NW2d 133 (2010) (finding that because the defendant had not supported his challenge with any evidence, his "challenge was not effective and . . . the trial court did not abuse its discretion by declining to change the PSIR").

By adjourning sentencing for two weeks, the trial court gave defendant ample opportunity to produce evidence to support his claims. However, while defendant continued to dispute the accuracy of the armed robbery charge, he provided no evidence to substantiate his claims. Thus, defendant did not overcome the presumption that the information in the PSIR is

accurate or sustain his burden in effectively challenging the accuracy of the information in the PSIR. See *Lucey*, 287 Mich App at 277.

Even though defendant did not present an effective challenge to the accuracy of the PSIR, the trial court still provided defendant with an adequate opportunity to test the accuracy of the facts underlying the information. Defendant cites *People v Ewing (After Remand)*, 435 Mich 443; 458 NW2d 880 (1990) (opinion by BRICKLEY, J.), to support his contention that the consideration the judge gave to defendant's claims was inadequate. Based on *Ewing*,[6] defendant claims that a separate hearing on the veracity of the armed robbery charge was necessary and needed to include the opportunity to call and cross-examine witnesses.[7] However, in the portion of *Ewing* cited by defendant, Justice BRICKLEY explained that " '[t]he guiding principle [of an investigation into any dispute] should be the provision of an effective opportunity for both parties to rebut all allegations likely to have a significant effect on the sentence imposed.' " *Ewing*, 435 Mich at 450 (opinion by BRICKLEY, J.) (citation omitted). He further explained that "the need for a hearing arises only where there exist material disputes regarding facts likely to influence the court's sentencing decision which the court and the parties cannot resolve without such a hearing." *Id*. at 451. The Michigan Supreme Court did not define in *Ewing* what an "adequate opportunity" meant or announce an inflexible, specific procedure that must be followed when a defendant disputes the accuracy of the information contained in a PSIR. Instead, Justice BRICKLEY provided examples of methods a court could employ, in its discretion, in order to test the veracity of the disputed information. Furthermore, Justice BRICKLEY'S opinion was not joined by the majority of the Court and is, therefore, not binding on this Court under the doctrine of stare decisis. See *People v Armstrong*, 207 Mich App 211, 214-215; 523 NW2d 878 (1994) (noting that a majority of the Michigan Supreme Court must decide on a ground for a decision in order for the case to provide binding authority beyond the parties involved in the case).

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[6] "[Where there is a need for further evidence] the sentencing court should conduct a hearing with respect to all material factual disputes arising out of any presentence reports or the evidentiary proffers of the parties. Although the sentencing process should not become a 'minitrial,' occasions will arise when, in order to ensure that a sentence is not founded on material misinformation, the sentencing court should permit the parties to subpoena witnesses and to cross-examine persons who rendered [such] reports to the court and persons providing information contained in such reports. Hearsay and similar types of information inadmissible at trial may be received in the discretion of the court, but evidence offered by the parties should be subject to cross-examination." [*Ewing*, 435 Mich at 450 (opinion by BRICKLEY, J.) (citation omitted; alteration in original).]

[7] While defendant argues that he was entitled to a hearing where he could call witnesses in order to test the accuracy of the armed robbery charge, he does not name any witnesses who would have appeared to support his claims. Defendant simply demands a hearing to test the accuracy of his claims, but again does not provide any evidence that his dispute has merit.

While the trial court here did not specifically provide an opportunity for presenting and cross-examining witnesses, it did adjourn sentencing for two weeks to provide defense counsel an opportunity to investigate further. Had defense counsel been able to produce witnesses or evidence to support defendant's claims, the trial court was prepared to hear it. As defendant did not overcome the presumption that the information in the PSIR is accurate or sustain his burden in effectively challenging the accuracy of the information in the PSIR, and the trial court has wide latitude in selecting its response to defendant's claims, see *Spanke*, 254 Mich App at 648, the court's response in this case was reasonable and principled, and not an abuse of discretion.[8] Accordingly, the trial court did not err in assessing 25 points for OV 13.

Defendant's convictions are affirmed, but the case is remanded for resentencing in accordance with this opinion. We do not retain jurisdiction.

/s/ Amy Ronayne Krause
/s/ Kathleen Jansen
/s/ Cynthia Diane Stephens

[8] We note that defendant does not raise a challenge to his sentence pursuant to *People v Lockridge*, 498 Mich 358; 870 NW2d 502 (2015).