

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

MICHAEL DAVID FREEMAN,

Defendant-Appellant.

UNPUBLISHED

December 20, 1996

No. 183889

LC No. 94-005241-FH

Before: Smolenski, P.J., and Michael J. Kelly and J.R. Weber,* JJ.

MEMORANDUM.

Defendant was convicted by a jury on December 22, 1994 of one count of criminal sexual conduct, fourth degree and two counts of criminal sexual conduct third degree, contrary to MCL 750.520e; MSA 28.788(5); MCL 750.520d; MSA 28.788(4). He was sentenced on February 21, 1995 to sixteen to twenty-four months imprisonment for the fourth degree conviction and five to fifteen years each for the two counts of third degree criminal sexual conduct all to be served concurrently. Defendant appeals of right. We affirm and remand for a correction of the SIR and for hearing as to precisely what is to be deleted if necessary.

Defendant claims he is entitled to resentencing because he was improperly scored fifteen points on OV 25, contemporaneous acts, because the acts which resulted in conviction were used to assess points. The defendant's contention that inaccurate information was included in the presentence report was the subject of a hearing before the trial court on May 22, 1995. The court ruled that as to uncharged criminal acts, it would not consider them and ordered them stricken:

“Judges shouldn’t consider all those other things because if the prosecutor didn’t think it was good enough to charge, I don’t think it’s good enough for me to consider. And that’s why I’m going to strike every single alleged crime in that investigator’s report that was never charged....”

* Circuit judge, sitting on the Court of Appeals by assignment.

It is clear that the uncharged act played no roll in sentencing. *People v Landis*, 197 Mich App 217; 494 NW2d 865 (1992). However the defendant claims that the probation department failed to delete the material from the presentence report as ordered by Judge Clements. The prosecutor in reply does not argue that the disputed information was deleted, but only that since it did not have any effect on the sentence, it was at best harmless error. We remand for deletion of the offending material as per the trial judge's order. If the parties are unable to agree upon what matter should be deleted, the trial court shall conduct a hearing and order such deletion as will properly implement its previous order of May 22, 1995.

Affirmed and remanded for such clarification of the record as is necessary to delete the disputed uncharged criminal acts information contained in the presentence report. We do not retain jurisdiction.

/s/ Michael R. Smolenski

/s/ Michael J. Kelly

/s/ John R. Weber