

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

GARY LEE WARNEK,

Defendant-Appellant.

UNPUBLISHED

March 28, 1997

No. 188083

Macomb Circuit Court

LC No. 94-002939-FC

Before: D.F. Walsh,* P.J., and R.P. Griffin** and W.P. Cynar,* JJ.

MEMORANDUM.

Defendant pleaded guilty to second-degree criminal sexual conduct, MCL 750.520c; MSA 28.788(3), and was sentenced to four to fifteen years' imprisonment. He appeals as of right. We affirm defendant's conviction and sentence but remand for correction of the presentence investigation report (PSIR). This case has been decided without oral argument pursuant to MCR 7.214(A).

Defendant's request for resentencing on the ground that his sentence is invalid is without merit. *In re Dana Jenkins*, 438 Mich 364, 369 n 3; 475 NW2d 279 (1991). The trial court imposed a proportionate sentence. *People v Merriweather*, 447 Mich 799, 806; 527 NW2d 460 (1994); *People v Milbourn*, 435 Mich 630; 461 NW2d 1 (1990); *People v Dukes*, 189 Mich App 262, 266; 471 NW2d 651 (1991). Further, the trial court properly responded to the specific challenges made by defendant's attorney to the PSIR at sentencing. *People v Newcomb*, 190 Mich App 424, 427; 476 NW2d 749 (1991); *People v Hoyt*, 185 Mich App 531, 462 NW2d 793 (1990). See also *People v Puckett*, 178 Mich App 224, 226; 443 NW2d 470 (1989); *People v Potrafka*, 140 Mich App 749; 366 NW2d 35 (1985). However, the PSIR should have been corrected to include the two psychological reports. MCR 6.425(A)(5) and (D)(3); MCL 771.14; MSA 28.1144. Hence, we remand this case to the trial court for the limited purpose of having the psychological reports made part

*Former Court of Appeals judges, sitting on the Court of Appeals by assignment pursuant to Administrative Order 1996-10.

**Former Supreme Court justice, sitting on the Court of Appeals by assignment pursuant to Administrative Order 1996-10.

of the PSIR transmitted to the Department of Corrections. *People v Martinez (After Remand)*, 210 Mich App 199, 203; 532 NW2d 863 (1995). Resentencing is not required because defendant was not prejudiced by the manner in which the psychological reports were presented to the trial court at sentencing.

Defendant's conviction and sentence are affirmed, but the case is remanded for correction of the PSIR in accordance with this opinion. No further jurisdiction.

/s/ Daniel F. Walsh

/s/ Robert P. Griffin

/s/ Walter P. Cynar