STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

MICHAEL LEE TIPPETT,

Defendant-Appellant.

UNPUBLISHED
December 30, 1997

No. 196481
Bay Circuit Court
LC No. 92-001127 FH

Before: McDonald, P.J., and Wahls and J. R. Weber*, JJ.

PER CURIAM.

This is an appeal of right from defendant's sentence, after pleading guilty to probation violation, based on an underlying offense of breaking and entering an unoccupied dwelling with intent to commit larceny, MCL 750.110a; MSA 28.305. Defendant admitted violating his probation by having been convicted of two counts of first degree criminal sexual conduct, one count of second degree criminal sexual conduct, and one count of allowing a child to engage in sexually abusive activity for the purpose of producing child sexually abusive material.

Defendant first contends that his right to be sentenced on the basis of accurate information was violated where the presentence investigation report made no reference to his mental history or status. The sentence transcript reflects that defendant personally had not only read the presentence report, but was able to induce the trial judge to amend the presentence report to correct a very subtle factual error concerning his child pornography conviction. Yet defendant, who was asked whether he had any other corrections to the presentence report, and also given an opportunity for allocution, as was defense counsel, failed to bring any mental health information of a mitigating nature to the trial court's attention. This issue is therefore not only unpreserved for appellate review purposes, *People v Bailey* (On Remand), 218 Mich App 645; 554 NW2d 391 (1996), but any omission of this information is, if error, self-inflicted. The omission of such information is not so egregious a factual inaccuracy as to constitute a cognizable basis for appellate relief. *People v Mitchell*, 454 Mich 145; 560 NW2d 600 (1997).

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

Defendant also contends that trial counsel's failure to bring this information to the sentencing judge's attention represents ineffective assistance of counsel. The information submitted by defendant, only some of which even existed at the time of sentencing is part of his appellate brief, yet contains not a single diagnosis by a qualified professional of any mental illness or deficiency, and all the information contained in those reports is the result of a mental health history provided by defendant himself and otherwise unverified. Again, therefore, defendant had it within his power to bring the same information to the trial court's attention at sentencing himself, without the intercession of counsel. Furthermore, even accepting arguendo defendant's claims that he was sexually abused as a child, this neither excuses his new offenses nor otherwise constitutes a factor in mitigation. It cannot be said that no reasonable, minimally competent criminal defense practitioner would fail to recognize the value of this information as a mitigating factor in sentencing, nor can defendant show the requisite prejudice needed for appellate relief on this issue, i.e., that the sentencing judge would necessarily have imposed a more lenient sentence if made aware of this information. *People v Pickens*, 446 Mich 298; 521 NW2d 797 (1994).

Affirmed.

/s/ Gary R. McDonald
/s/ Myron H. Wahls
/s/ John R. Weber