STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

        Plaintiff-Appellee,

v

BRADFORD A. SMITH,

        Defendant-Appellant.

UNPUBLISHED
January 9, 1998

No. 199445
Oakland Circuit Court
LC No. 95-138528 FC

Before: MacKenzie, P.J., and Hood and Hoekstra, JJ.

PER CURIAM.

Defendant appeals as of right from his conviction, on plea of guilty, to first-degree criminal sexual conduct, MCL 750.520b; MSA 28.788(2). The plea was the product of a sentence bargain, and defendant received in due course punishment as per the agreement. In this appeal, defendant claims only that the trial court erred in failing to excise a portion of the presentence report. This appeal is being decided without oral argument pursuant to MCR 7.214(E). We affirm.

The relevant portion of the presentence report was a summary of statements made by defendant's former spouse, alleging that before committing the offense of which he stands convicted, which involved sexual intercourse with his 15-year-old adopted daughter, defendant had displayed a propensity for sexually molesting underage females, particularly those subject to his control. It was asserted that such incidents of sexual harassment occurred at three prior places of employment. The presentence investigator reported, however, that no police reports of such incidents existed, and defendant's previous places of employment "would reveal no information regarding his employment record or termination from said employment."

Defendant may challenge the accuracy or relevancy of information contained in a presentence report. MCL 771.14(5); MSA 28.1144(5); MCR 6.425(D)(3). Here, since defendant stands convicted of a criminal sexual conduct offense involving a minor female subject to his parental authority, allegations that defendant similarly misused positions involving economic authority or control to sexually abuse minor females are relevant both to the sentence to be imposed and to prospects for rehabilitation

and thus to future parole. Accordingly, the trial court did not abuse its discretion in refusing to strike this information from the presentence report on the ground that the material is irrelevant.

To challenge the information for inaccuracy, defendant bears the burden of going forward with an effective challenge. *People v Walker*, 428 Mich 261, 268; 407 NW2d 367 (1987). Once an effective challenge has been made, the burden of proof is on the prosecution to establish disputed facts by a preponderance of the evidence. Here, defendant has failed to make an effective challenge. Other than an assertion that the former spouse had "an axe to grind," defendant did not challenge the accuracy of the presentence investigator's summary of her remarks. Defendant effectively conceded that his former spouse had made such statements.

To challenge the accuracy of the statements themselves, defendant needed to come forward with some information to suggest that those allegations were false. The presentence investigator had been unable to confirm or refute those allegations because defendant's former employers would not release information. To mount an effective challenge, defendant would have had to either produce representatives of those employers to give testimony, which testimony would be privileged from possible civil liability, *Pasoto v Hancock*, 41 Mich App 622; 200 NW2d 777 (1972), or to provide signed releases authorizing the employers to provide the information and waive any associated privilege of confidentiality or claim for negligence, defamation, or similar liability. Defendant failed to rebut the presumption that he had some control over that information, even though it was in the hands of third persons, and on this record he failed to mount an effective challenge warranting an evidentiary hearing or, in the alternative, striking of the information from the presentence report. The trial court did not abuse its discretion in finding that defendant failed to establish grounds to amend the presentence report.

Affirmed.

/s/ Barbara B. MacKenzie
/s/ Harold Hood
/s/ Joel P. Hoekstra