

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

WILLIAM LEE HAYS,

Defendant-Appellant.

UNPUBLISHED

February 6, 1998

No. 191472

Ionia Circuit Court

LC No. 92-009543 FH

Before: Gage, P.J., and Murphy and Reilly, JJ.

MEMORANDUM.

Defendant's jury convictions of being a prisoner in possession of a weapon, MCL 800.283(4); MSA 28.1623(4), assaulting a prison employee, MCL 750.197c; MSA 28.394(3), and being a fourth habitual offender, MCL 769.12; MSA 28.1084, were previously affirmed by this Court in an unpublished opinion in Docket No. 160011 (November 23, 1994), but the cause was remanded for resentencing. At the resentencing, defendant received the same enhanced terms of 15 to 45 years for the weapons conviction and 10 to 15 years for the assault. His application for delayed appeal was granted, generating the present appeal, which is being decided without oral argument pursuant to MCR 7.214(E).

Defendant first contends that information in the updated presentence report which the trial court agreed not to consider in imposing sentence should be stricken from the report. As defendant acknowledges, this would in any event be a futile gesture, since the information concerns defendant's institutional record, which, whether or not included in the presentence report, will still be in the files of the Department of Corrections and the Parole Board. In any event, correction of the presentence report is unnecessary and unwarranted. Defendant relies on MCR 6.425(D)(3)(a) and MCL 771.14(5); MSA 28.1144(5), and case law applying those principles, e.g. *People v Brooks*, 169 Mich App 360, 364-365; 425 NW2d 555 (1988). Both the court rule and the statute, as well as the case law, apply only to situations in which the defense has challenged the accuracy or relevancy of information in the presentence report, and the trial court has agreed not to consider such information. Here, defendant did not claim that the information in question was either inaccurate or irrelevant; he only asserted that, on the basis of separation of powers principles, these administrative adjudications by the

executive branch could not be considered by the judicial branch. Without in any way intending to give credence to that assertion, this Court notes simply that when the trial court acceded to defendant's request, it was not implicitly suggesting that the information was in any way inaccurate or irrelevant. To the contrary, the trial court suggested that the information was highly relevant, and this Court agrees. No legal basis for ordering a revision of the presentence report has been presented.

Defendant's other contention on appeal is that his sentence is disproportionate to the offense and the offender. As an habitual offender, his sentence is reviewed solely for abuse of sentencing discretion, and an abuse of discretion will not be found where the trial court has imposed a significant sentence based upon the habitual offender's extensive criminal history and potential, or lack thereof, for rehabilitation. *People v Hansford (After Remand)*, 454 Mich 320; ___ NW2d ___ (1997). Given the underlying facts of this case and defendant's criminal history, this Court cannot say that "no reasonable sentencer" would have found the actual sentences imposed justified. *People v Merriweather*, 447 Mich 799, 807; 527 NW2d 460 (1994). Accordingly, no abuse of discretion has occurred.

Affirmed.

/s/ Hilda R. Gage

/s/ William B. Murphy

/s/ Maureen Pulte Reilly