

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

TIMOTHY LEE MCGHEE,

Defendant-Appellant.

UNPUBLISHED

November 13, 1998

No. 199755

Calhoun Circuit Court

LC No. 96-000551 FC

Before: Whitbeck, P.J., and McDonald and T. G. Hicks*, JJ.

MEMORANDUM.

Following his conviction by jury of assault with intent to rob while armed, MCL 750.89; MSA 28.284, the court sentenced defendant to an enhanced term of imprisonment of four to ten years, reflecting his status as a second felony offender, MCL 769.10; MSA 28.1082. Defendant appeals as of right. We remand for further proceedings consistent with this opinion.

The sentencing court did not abuse its sentencing discretion by imposing a disproportionately severe sentence, particularly where the instant offense was committed while defendant was on probation and where the instant offense represents an escalation in the seriousness of defendant's criminal behavior. *People v Hansford (After Remand)*, 454 Mich 320, 326; 562 NW2d 460 (1997).

However, the trial court erred by failing to properly resolve defendant's challenges to certain information contained in the presentence report. In response to these challenges, the trial court merely stated, "I take the Defendant's statements into account with respect to his dispute with the pre-sentence report. There are a couple of things which are, however, nonetheless undisputed in this case and very probative." These remarks are ambiguous and fail to reveal whether the trial court considered or disregarded the challenged information in sentencing defendant. Thus, the trial court failed to comply with the requirement of MCR 6.425(D)(3) to either make a finding with regard to challenged information in a presentence report or determine that such a finding is unnecessary because it will disregard the challenged information in sentencing. We note that, if the trial court meant to state that it

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

was disregarding the challenged information, then it should have ordered that information deleted from the presentence report pursuant to MCR 6.425(D)(3).

Accordingly, we remand this case to the trial court for the trial court to clarify whether the challenged information in the presentence report played any part in its sentencing decision. *People v Landis*, 197 Mich App 217, 219; 494 NW2d 865 (1992). If on remand, the trial court determines that any part of the challenged information in the presentence report played a role in its sentencing decision, then defendant shall be resentenced and the trial court shall properly resolve any pertinent challenges pursuant to MCR 6.425(D)(3). *Landis, supra*. However, if the trial court determines on remand that none of the challenged information in the presentence report was considered in its sentencing decision, then defendant's sentence shall not be disturbed, but the trial court shall order the challenged information stricken from the presentence report in accordance with MCR 6.425(D)(3). *Landis, supra*.

Remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ William C. Whitbeck

/s/ Gary R. McDonald

/s/ Timothy G. Hicks