

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

KERRY JAMAR DOTSON,

Defendant-Appellant.

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UNPUBLISHED  
November 2, 1999

No. 211798  
Washtenaw Circuit Court  
LC Nos. 95-004362 FH  
95-005378 FH

Before: Bandstra, C.J., and Jansen and Whitbeck, JJ.

PER CURIAM.

Defendant was convicted by plea of second-degree home invasion, MCL 750.110a(3); MSA 28.305(a)(3), and uttering and publishing, MCL 750.249; MSA 28.466, and was placed on probation. One of the conditions of probation included being assigned for a period of up to 120 days in the Special Alternative Incarceration Program (“SAI”) (a boot camp program) of Michigan Department of Corrections and to obey all the rules of the program; failure to comply with program rules would be considered a probation violation. Defendant was subsequently terminated from the SAI for rule violations. He was then convicted of probation violation for having been terminated from SAI. Defendant was sentenced to concurrent terms of ~~3 1/2~~ fifteen years’ imprisonment for second-degree home invasion and ~~3 1/2~~ fourteen years’ imprisonment for uttering and publishing. Defendant appeals as of right. We vacate defendant’s sentences and remand for resentencing.

Defendant first argues that resentencing is required because, after the court found a probation violation, defendant’s attorney was not afforded the opportunity to allocute and address the court on the question of circumstances considered important during sentencing, a violation of MCR 6.425(D)(2)(c). We agree.

MCR 6.425(D)(2) states, in pertinent part,

At sentencing the court, complying on the record, must:

\* \* \*

(c) give the defendant, the defendant's lawyer, the prosecutor, and the victim an opportunity to advise the court of any circumstances they believe the court should consider in imposing sentence.

Provisions of this rule are mandatory, and failure to comply requires resentencing. *People v Berry*, 409 Mich 774, 779; 298 NW2d 434 (1980). "The rule requires that the record reflect that *both* the defendant and his counsel were given the opportunity to address the court before sentencing." *Id.* (emphasis in original.) The court must give defendant and his counsel an opportunity to address the court not about matters with which the *court* was concerned but must give defendant and his counsel an opportunity to address the court with respect to matters of concern to the *defendant*. *Id.* at 779-780 (emphasis in original).

In this case, not only was defendant's lawyer not given any opportunity to address the court with respect to matters of concern to *defendant* in imposing sentence, he was also not given any opportunity to advise the court of any matters with which the *court* was concerned in imposing sentence. Although defendant was asked by the judge, after the judge found defendant guilty, if defendant had anything to tell the judge or if there were any circumstances defendant wanted the judge to consider before sentencing, defendant's lawyer was given no opportunity to address the court regarding sentencing. There was no lapse of time and no opportunity for defendant's lawyer to address the court on defendant's behalf, between the time defendant spoke after being found guilty and the time defendant was sentenced. All of the testimony before the judge found defendant guilty of violation of probation concerned whether defendant violated his probation; it did not concern considerations pertaining to sentencing. The record indicates that defendant's lawyer was not given a reasonable opportunity to address the court regarding concerns and considerations to imposing sentencing. Therefore, because the court did not comply with the provisions of MCR 6.425(D)(2)(c), defendant is entitled to resentencing.

Next, defendant argues that resentencing is also required because the presentence report was not updated and there was no waiver of the update. Because we are remanding for resentencing on the basis of the allocution problem, we need not consider the merits of this argument. However, the preparation of an updated presentence investigation report will be necessary for resentencing. See *People v Triplett*, 407 Mich 510, 515; 287 NW2d 165 (1980) (a reasonably updated report must be utilized at the time of sentencing).

We vacate defendant's sentences and remand for resentencing. We do not retain jurisdiction.

/s/ Richard A. Bandstra

/s/ Kathleen Jansen

/s/ William C. Whitbeck