

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

VICTOR A. HALL,

Defendant-Appellant.

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UNPUBLISHED

March 10, 2000

No. 212885

Wayne Circuit Court

LC No. 97-007428

Before: Holbrook, Jr., P.J., and Kelly and Collins, JJ.

PER CURIAM.

Defendant appeals as of right from his jury convictions of voluntary manslaughter, MCL 750.321; MSA 28.553, and possession of a firearm during the commission of a felony, MCL 750.227b; MSA 28.424(2), for which he was sentenced to consecutive prison terms of one to fifteen years and two years, respectively. We affirm defendant's convictions, but remand for correction of the presentence report.

Defendant first contends that he is entitled to a new trial due to the erroneous admission of evidence under MRE 404(b), regarding his use of drugs. Defendant failed to preserve this issue with a timely objection at trial. MRE 103(a)(1); *People v Welch*, 226 Mich App 461, 464; 574 NW2d 682 (1997). In any event, the record shows that the evidence was not admitted under MRE 404(b) to prove a fact in issue, but was admitted as part of defendant's own statement, which was admissible against him. MRE 801(d)(2)(A); *People v Armstrong*, 175 Mich App 181, 186; 437 NW2d 343 (1989). Accordingly, there was no error.

Defendant next contends that the prosecutor improperly elicited testimony regarding the terms of a plea agreement offered to a prosecution witness, ostensibly in exchange for his testimony. Defendant likewise failed to preserve this issue for appeal with a timely objection at trial, MRE 103(a)(1); *Welch, supra*, and further, has waived the right to predicate error on the admission of this evidence, given that he cross-examined the witness about the plea agreement. *People v Dowdy*, 211 Mich App 562, 571-572; 536 NW2d 794 (1995). Therefore, appellate relief is not warranted.

Defendant also argues that the prosecutor improperly commented on his failure to testify when the prosecutor argued that his statements to the police and another witness were “unsworn.” Assuming that the prosecutor’s statements were improper, we find that reversal is not required in light of the fact that the prosecutor acknowledged that he retained the burden of proof and defendant’s concession that any error could be cured by CJI2d 3.3, which the court included in its instructions. *People v Brownridge (On Remand)*, 237 Mich App 210, 215-216; \_\_\_ NW2d \_\_\_ (1999).

Defendant lastly contends that the trial court erred in failing to prepare an amended presentence report containing the corrections discussed at sentencing. The prosecutor concedes this issue and we agree that an amended presentence report is required. MCL 771.14(5); MSA 28.1144(5); *People v Dilling*, 222 Mich App 44, 53-54; 564 NW2d 56 (1997); *People v Martinez (After Remand)*, 210 Mich App 199, 202-203; 532 NW2d 863 (1995).

Affirmed and remanded for correction of the presentence report. We do not retain jurisdiction.

/s/ Donald E. Holbrook, Jr.

/s/ Michael J. Kelly

/s/ Jeffrey G. Collins