STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED February 22, 2011
V	No. 295883 Lenawee Circuit Court
MARK RONALD SHAYKIN, Defendant-Appellant.	LC No. 09-14329-FC

Before: SAAD, P.J., and K. F. KELLY and DONOFRIO, JJ.

PER CURIAM.

Defendant appeals as of right his jury trial convictions of conspiracy to commit unlawful imprisonment, MCL 750.157a and MCL 750.349b, two counts of solicitation of unlawful imprisonment, MCL 750.157b(3) and MCL 750.349b, and using a computer to commit solicitation of unlawful imprisonment, MCL 752.797(3)(e).[1] In accordance with a *Cobbs*[2] agreement, the trial court sentenced defendant as a fourth habitual offender, MCL 769.12, to life in prison. Because defendant did not receive ineffective assistance of counsel at trial, sufficient evidence supported his convictions, and he has not established error with regard to his sentencing, we affirm.

Ashley Clark is age 21 and is defendant's niece by marriage. In June 2007 defendant and Clark were living in the same household. The two had a falling out[3] and Clark left Michigan to live with another relative named Nina Rosalis in Toledo, Ohio. Clark did not want anything to do with defendant. Clark saw defendant walking around Toledo twice after she moved. Clark

[1] The jury acquitted defendant of the following four counts: conspiracy to commit murder, MCL 750.157a and MCL 750.316(1)(a); two counts of solicitation to commit murder, MCL 750.157b(2), using a computer to commit solicitation to commit murder, MCL 752.797(3)(f).

[2] *People v Cobbs*, 443 Mich 276; 505 NW2d 208 (1993).

[3] There were allegations that defendant had raped Clark and that day she fled to Ohio. The trial court did not allow any allegations of criminal sexual conduct into evidence at trial.

asked defendant why she kept seeing him and he told her he was worried about her and was concerned that she was using drugs.

Joshua Snodderly, 20 years old, and Allen Oliver are long-time friends living in Toledo, Ohio. Oliver approached Snodderly at a skate park stating, "this gentlemen [sic] has a bit of a job for us to do." The gentleman Oliver referred to was defendant. And the payment amount that was "tossed around" was $10,000. Defendant drove to Toledo, Ohio and picked up Snodderly, Oliver, and Oliver's younger half-brother, Leo Sancrant, and drove them back to defendant's apartment in Adrian, Michigan. On the drive to Adrian, defendant discussed Clark but did not reveal his ultimate plot. Snodderly testified that the young men thought defendant was "looney, out of control" but they were interested in attempting to steal items from defendant's apartment or a warehouse near defendant's apartment that defendant said contained old tools. Snodderly testified that they "were a pretty bad group of kids," and that they were stealing things to live. Defendant dropped Snodderly and Sancrant at the warehouse but they saw what they thought was a police car and abandoned casing the place. Snodderly and Sancrant walked to defendant's apartment where they met up with defendant and Oliver.

Once in the apartment defendant showed the young men on his computer: maps of the house Clark was staying at in Ohio, an aerial satellite view of Clark's neighborhood, and her address. Defendant also showed them video of pornographic or nude images of Clark. According to Snodderly, defendant explained that he wanted them to go to the address where Clark was staying, "to kidnap her, go in and drag her out the back door and throw her in his trunk and let him have his way with her." Snodderly believed defendant was serious after defendant showed them all the planning he had done consisting of maps and videos, as well as defendant talking obsessively about having Clark kidnapped. Defendant also showed them a large knife that he brought out of his bedroom. Defendant explained that he wanted them to use the knife when kidnapping Clark because "[the knife] represents me. She will know who is coming after her." Snodderly stated that he and his friends "wanted out" at that point but defendant was their only ride back to Toledo.

Later that evening, defendant drove Snodderly, Oliver, and Sancrant back to Toledo. After returning to Snodderly's house, defendant showed the young men items he had in the trunk of his car to be used in the kidnapping including: rope, knit caps, bandanas, gloves, duct tape, and a rolling pin wrapped in duct tape. Defendant also brought the large knife and kept it in the back seat of his car. Defendant also supplied a hand-drawn map of the area around Clark's house with Clark's house marked and the address included. Defendant also had a surplus of pills he offered the young men as well as marijuana. Defendant fell asleep on Snodderly's couch so all four of them spent the night at Snodderly's house. While defendant was sleeping on the couch, the young men discussed the situation. After weighing the options, they decided that the best course of action would be to call the police.

The following morning, defendant showed the young men where they were supposed to go to kidnap Clark. According to Snodderly, defendant said, "Go in there and get her. Tie her up and drag her out the back." Snodderly testified that he believed defendant was going to "murder her, rape her, obviously something to harm her." Snodderly testified that he, Oliver, and Sancrant wanted no part of kidnapping Clark or being involved with defendant's plan at all. Defendant took Snodderly, Oliver, and Sancrant to the house. The first time, around 2:00 p.m.,

defendant dropped them off and then drove around the block. Defendant was under the belief that the young men were planning the kidnapping at that time and were simply checking things out at the house. Instead, after they entered, they spoke to a woman at the house and explained defendant's plan and said that she should call the police. The woman called the police and Snodderly spoke with the police officer over the phone and explained the situation. Snodderly, Oliver, and Sancrant were at the house for about fifteen to twenty minutes. When they left they walked back to defendant's car around the corner and defendant drove them back to Snodderly's house.

Defendant drove the three young men back to the house sometime between 3:00 p.m. and 4:00 p.m. Defendant parked just down the street from the house around the corner. The car was not in sight of the house when it was parked because it was defendant's plan, according to Snodderly, "to shoot through the back of the alley and meet us in five minutes so we could throw [Clark] in the trunk and he would leave." About ten minutes after defendant dropped them off at the house, the police arrived on the scene.

Retired sergeant of the Toledo police department, Greg Smith, testified that after receiving a call in the detective bureau, he went to the house on Colburn Street to see if there was anything to the phone call. Smith spoke with Snodderly, Oliver, Sancrant, and the woman living at the house, Nina Rosalis, but their discussion ended within minutes because defendant came into sight on the street. Smith testified that defendant drove around the corner and turned around when he saw a marked police vehicle sitting in front of the house. Police followed defendant down the street, defendant stopped, and then police took him into custody. Smith testified that Snodderly, Oliver, and Sancrant turned over to him a knife, a map, a knit cap, a cell phone, and bandanas. From defendant's trunk, police took: various colored bandanas, several different types of gloves including latex surgical gloves, a rolling pin with duct tape taped to it, a roll of duct tape, shoe strings, pills, a stocking cap, a belt, and a bag.

At trial, the last witness called by the prosecution was Allen Oliver. Oliver was subpoenaed but failed to appear. Oliver had testified at the preliminary examination in this matter. At trial, the prosecutor requested to have Oliver's preliminary examination testimony transcript read aloud to the jury at trial, defense counsel did not object to the request, and the trial court allowed it. Oliver's recounting of the events leading to defendant's arrest and conviction echoed Snodderly's testimony at trial. Though Oliver added that defendant was an acquaintance and had approached him and told him that he was having problems with Clark because she was trying to extort money from him and he wanted to take care of it. Oliver stated that defendant told him he wanted the young men to assist him with the handling of the problem by "snatch[ing] this bitch up" and that he would pay them out of a "bank bag job" he was planning and also provide them with pills. Defendant also explained to Oliver that he had tracked down Clark by making and posting missing persons posters all around Toledo. Defendant showed Oliver one of the posters. According to Oliver, defendant did not believe he could take Clark himself because he could not get close to her because she would likely run from him.

While at first Oliver did not think defendant was serious about harming Clark, after visiting defendant's apartment, hearing his plan, seeing the gloves, rope, duct tape, wooden club, and masks, and observing defendant's obsessive behavior, Oliver believed defendant was "dead serious." Oliver stated that defendant wanted them to: "Snatch [Clark] up. . . . he figured the

best idea would be to go to the front door, snatch her up, knock her out if we had to, carry her out the back door, in the trunk and make our way back to our house on our own and meet him there." And then, according to Oliver, defendant would "take it from there." Oliver also stated that when defendant was showing him the large knife in his apartment, he said, "you could stick her with this . . . . I want her dead. I want to kill—I want to kill this girl." Oliver testified that he might break the law sometimes by stealing because "[e]verybody's gotta eat," but he was not interested in being a part of defendant's plan.

Following defendant's arrest, he was tried and convicted by a jury of conspiracy to commit unlawful imprisonment, MCL 750.157a and MCL 750.349b, two counts of solicitation of unlawful imprisonment, MCL 750.157b(3) and MCL 750.349b, and using a computer to commit solicitation of unlawful imprisonment, MCL 752.797(3)(e). Defendant now appeals as of right.

Defendant first argues that his counsel was ineffective for failing to object at trial to the reading of Oliver's prior preliminary examination testimony when Oliver did not appear and that Oliver's testimony was pivotal in the jury's finding that defendant was guilty of solicitation and conspiracy to commit unlawful imprisonment. We review defendant's unpreserved ineffective assistance of counsel claim for plain error affecting his substantial rights. *People v Carines*, 460 Mich 750, 763-764; 597 NW2d 130 (1999). Because defendant did not raise his ineffective assistance of counsel claim in the trial court, our review of that claim is limited to mistakes apparent on the record. *People v Ginther*, 390 Mich 436, 443; 212 NW2d 922 (1973); *People v Sabin (On Second Remand)*, 242 Mich App 656, 658-659; 620 NW2d 19 (2000). "Effective assistance of counsel is presumed, and defendant bears a heavy burden of proving otherwise." *People v Effinger*, 212 Mich App 67, 69; 536 NW2d 809 (1995). To establish ineffective assistance of counsel, defendant must show that counsel's performance fell below an objective standard of reasonableness, and that there is a reasonable probability that the result of the proceeding would have been different but for counsel's error. *People v Frazier*, 478 Mich 231, 243; 733 NW2d 713 (2007).

We review a trial court's determination whether to admit the preliminary examination testimony for an abuse of discretion. *People v Bean*, 457 Mich 677, 684; 580 NW2d 390 (1998). A trial court abuses its discretion when it chooses an outcome that is outside the range of reasonable and principled outcomes. *People v Babcock*, 469 Mich 247, 269; 666 NW2d 231 (2003).

The prosecution may use preliminary examination testimony "whenever the witness giving such testimony can not, for any reason, be produced at the trial . . . ." MCL 768.26. MRE 804(b)(1) provides the following exception for an unavailable witness's prior testimony:

> Testimony given as a witness at another hearing of the same or a different proceeding, if the party against whom the testimony is now offered, or, in a civil action or proceeding, a predecessor in interest, had an opportunity and similar motive to develop the testimony by direct, cross, or redirect examination.

MRE 804(a)(5) provides that a witness is unavailable for purposes of this rule if the witness "is absent from the hearing and the proponent of a statement has been unable to procure the

declarant's attendance . . . by process or other reasonable means, and in a criminal case, due diligence is shown." The test for due diligence is whether the prosecutor made "a diligent good-faith effort in its attempt to locate a witness for trial. The test is one of reasonableness and depends on the facts and circumstances of each case, i.e., whether diligent good-faith efforts were made to procure the testimony, not whether more stringent efforts would have produced it." *Bean*, 457 Mich at 684.

Here, the trial transcript is wholly silent with regard to the reason why Oliver did not appear for trial. There is no mention of his absence at any point leading up to the time he was called as a witness. Because defense counsel did not object to the nonproduction of Oliver or request a due diligence hearing, the reasons for Oliver's nonproduction are not apparent from the transcript record. At the time the prosecution called Oliver to the stand, the following exchange occurred:

> *The Prosecutor.* Our final witness is Allen Oliver. Mr. Oliver was a subpoenaed witness. He has failed to appear. I have his transcript. And I would propose for the final witness to read his testimony in from that.
>
> *The Court.* You may proceed.
>
> *The Prosecutor.* Detective Langford will answer for the witness Mr. Oliver.
>
> *The Court.* Do you have an extra copy of that at all?
>
> *The Prosecutor.* Sure.
>
> *The Court.* We don't need to have the court reporter take this down, do we?
>
> *The Prosecutor.* We can give him that copy.
>
> *The Court.* This is the transcript of July 29th?
>
> *The Prosecutor.* That's correct. The preliminary examination which was held in front of Judge Sheridan. And this would be the direct examination and cross-examination of Allen Oliver.
>
> *The Court.* Where does the examination end?
>
> *The Prosecutor.* Page 177, I believe, Your Honor.
>
> *The Court.* All right.
>
> *The Prosecutor.* Let me look through mine. Page 170.
>
> *The Court.* Page 170?
>
> *The Prosecutor.* Is where it ends, correct?

The Court. All right. You may proceed.

Defendant now argues that there was no inquiry regarding what due diligence had been shown by the prosecutor to provide Oliver as a witness at trial and the mere statement that Oliver had been subpoenaed is insufficient because it does not address the prosecutor's knowledge of Oliver's receipt of the subpoena, intention to fail to appear, his location, and what efforts, if any, the police took to obtain his presence. Defendant's assertion is not entirely accurate, however, considering the special circumstances presented in securing the witnesses in this case who were all from Ohio.

Here, the record contains four separate documents each entitled "Request for Attendance of Out-of-State Witness and Certificate of Lenawee County Circuit Court Judge, State of Michigan, to Request Attendance of Out-of-State Witness." These were requests prepared by the prosecutor for the trial court's signature and seal of the court to be presented to a judge of the Court of Common Pleas in Ohio "in a proceeding to compel the attendance" of Clark, Snodderly, Detective Willie Johnson, and finally, Oliver. The trial court signed each "Certificate of Judge Requesting State for Attendance of Out-of-State Witness to Testify in a Criminal Prosecution" and each request was notarized.

The substance of the request relating to Oliver states as follows, in pertinent part:

> 2. That the said defendant has pled not guilty thereto and the trial therein has been set by the court to commence on Tuesday, October 27, 2009 and end Thursday, October 20, 2009.
>
> 3. That Allen Oliver, who is currently incarcerated in Oakwood Correctional Facility located at 3200 North West Road, County of Allen, State of Ohio, is a necessary and material witness for the State of Michigan in this prosecution by reason of the following:
>
> That Defendant Mark Ronald Shaykin is accused of soliciting Allen Oliver to kidnap, detain, and kill Ashley Nicole Clark. He would be necessary for providing testimony concerning the solicitation, the plans for carrying out the murder, and any other probative and material details concerning the crime.
>
> 4. That the personal presence of said Allen Oliver in this Court for the purpose of giving testimony in this jury trial upon behalf of the State of Michigan will be required for the following days: Tuesday, October 27, 2009, commencing at 9:00 a.m., Wednesday, October 28, 2009, commencing at 10:30 a.m. and Thursday, October 29, 2009, commencing at 9:00 a.m. in the forenoon.
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> 5. That if Allen Oliver comes into the State of Michigan in obedience to a summons directing him to attend and testify at this trial, the laws of the State of Michigan and of any other State through which said witness may be required to pass by the ordinary course of travel to attend this jury trial, give him protection from arrest or the service of process, civil or criminal, in connection with matters which arose before entrance into this state pursuant to summons.

> 6. That this certificate is made for the purpose of being presented to a Judge of a Court of record of the County of Allen, State of Ohio, where Allen Oliver now is, upon proceedings to compel Allen Oliver to attend and testify at the trial in said criminal prosecution before this court in the State of Michigan upon the days and dates hereinbefore set forth.
>
> WITNESS, the Honorable Timothy P. Pickard, Judge of said Court, at Adrian, Michigan, this 27 day of August, 2009.

Clearly, the prosecutor had tracked down the whereabouts of Oliver before trial and requested that the trial court call for the Ohio court to compel Oliver to appear at trial on the dates and times set for trial. The trial court signed the prosecutor's request. Defendant admits in his brief on appeal that Oliver was indeed subpoenaed to appear at trial. Thus, the trial court's request must have been mailed to the Ohio court, received, and served on Oliver. "[A] circuit judge may take judicial notice of the files and records of the court in which he sits." *Knowlton v City of Port Huron*, 355 Mich 448, 452; 94 NW2d 824 (1959); see also *People v Sinclair*, 387 Mich 91, 103; 194 NW2d 878 (1972). The trial court was very aware of the circumstances and, while not stating so on the record, because it allowed the reading of the preliminary examination transcript into the record, it is apparent that the trial court found that diligent, good faith efforts were made to produce Oliver. *People v Dye*, 431 Mich 58, 67; 427 NW2d 501 (1988), cert den sub nom *Michigan v Dye*, 488 US 985; 109 S Ct 541; 102 L Ed 2d 571 (1988) (Whether diligent, good faith efforts were made to produce a witness depends on the particular facts of each case.) On this record, defendant has not shown that the trial court abused its discretion when it admitted Oliver's preliminary examination testimony at trial. *Bean*, 457 Mich at 684.[4]

With regard to defendant's concomitant ineffective assistance of counsel claim, defendant also fails to demonstrate error. Defendant has a heavy burden, because to establish ineffective assistance of counsel, defendant must show that counsel's performance fell below an objective standard of reasonableness, and that there is a reasonable probability that the result of the proceeding would have been different but for counsel's error. *Frazier*, 478 Mich at 243. While objecting to the preliminary examination testimony would have ultimately been denied under the circumstances of this case, it would still have been a prudent objection to make in order for the trial court to articulate its reasons on the record. Nevertheless, there is no reasonable probability that the result of the proceeding would have been different had counsel objected. We have carefully reviewed the transcript and both Snodderly's testimony and Oliver's testimony recounted the events leading up to defendant's arrest almost identically. The

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[4] It is impermissible for a party to enlarge the record on appeal. *People v Williams*, 241 Mich App 519, 524 n 1; 616 NW2d 710 (2000); see also *People v Seals*, 285 Mich App 1, 20-21; 776 NW2d 314 (2009), and *People v Horn*, 279 Mich App 31, 38; 755 NW2d 212 (2008). Therefore, we have not considered Appendices I and II attached to the prosecutor's brief on appeal alleging that Oliver acknowledged service of the subpoena to appear at the proceedings in open court in Ohio and also cashed a travel expense check issued by Lenawee County.

only damaging assertion of Oliver's that Snodderly never mentioned was the fact that defendant told Oliver explicitly that defendant wanted Clark dead. The jury clearly did not credit this testimony, however, because the jury acquitted defendant of all four counts relating to murder: conspiracy to commit murder, MCL 750.157a and MCL 750.316(1)(a); two counts of solicitation to commit murder, MCL 750.157b(2), using a computer to commit solicitation to commit murder, MCL 752.797(3)(f). Also, importantly, Oliver was thoroughly cross-examined during the preliminary examination.

In sum, we conclude that defense counsel was not ineffective for failing to object to the admission of Oliver's preliminary examination testimony where Oliver had been ordered by the courts to appear but failed to appear, Snodderly, another co-conspirator testified almost indistinguishably, and defendant had the opportunity to cross-examine Oliver during the proceedings.

Next, defendant contends that there was insufficient evidence at trial to prove beyond a reasonable doubt that defendant was guilty of both solicitation and conspiracy to commit unlawful imprisonment. We review a defendant's allegations regarding insufficiency of the evidence de novo. We view the evidence in the light most favorable to the prosecution to determine whether a rational trier of fact could find that the essential elements of the crime were proven beyond a reasonable doubt. *People v Herndon*, 246 Mich App 371, 415; 633 NW2d 376 (2001). Satisfactory proof of the elements of the crime can be shown by circumstantial evidence and the reasonable inferences arising therefrom. *Carines*, 460 Mich at 757. It is for the trier of fact to determine what inferences fairly can be drawn from the evidence and the weight to be accorded to those inferences. *People v Wolfe*, 440 Mich 508, 514-515; 489 NW2d 748, amended 441 Mich 1202 (1992); *People v Hardiman*, 466 Mich 417, 428; 646 NW2d 158 (2002). All conflicts in the evidence must be resolved in favor of the prosecution. *People v Terry*, 224 Mich App 447, 452; 569 NW2d 641 (1997).

Pursuant to MCL 750.349b,

> (1) A person commits the crime of unlawful imprisonment if he or she knowingly restrains another person under any of the following circumstances:
>
> (a) The person is restrained by means of a weapon or dangerous instrument.
>
> (b) The restrained person was secretly confined.
>
> (c) The person was restrained to facilitate the commission of another felony or to facilitate flight after commission of another felony.

The evidence establishes that defendant both conspired with others to unlawfully imprison Clark and solicited others to unlawfully imprison Clark.

To establish a conspiracy, the prosecution must show that there was an agreement, either express or implied, between two or more persons to commit an illegal act, or a legal act accomplished in an illegal manner. MCL 750.157a. The statute states specifically, "[a]ny person who conspires together with 1 or more persons to commit an offense prohibited by law, or to commit a legal act in an illegal manner is guilty of the crime of conspiracy . . . ." MCL

750.157a. "An overt act by the defendant is not required to prove a conspiracy, because the essence of the offense is the agreement itself." *People v Meredith (On Remand)*, 209 Mich App 403, 408; 531 NW2d 749 (1995). The prosecution presented evidence that defendant had the intent to conspire with and did conspire with others to forcibly kidnap Clark. Defendant contacted Oliver and asked him if he was interested in doing a job for money and pills. Oliver recruited Snodderly and Sancrant. Defendant drove to Toledo and picked up the young men and drove them back to his apartment in Michigan. Once at the apartment defendant outlined the details of his plan to kidnap Clark. Defendant provided a knife as well as a rolling pin covered in duct tape to be used as a club during the kidnapping. Defendant also provided the young men with Clark's address, pictures of her neighborhood, a handwritten map to her house, and actually drove them to Clark's house and dropped them off twice. Defendant also provided the young men bandanas, knit caps, and gloves to be used during the crime. Defendant explained that he needed them to help him kidnap Clark because he could not get close to her himself because she would run.

Initially, Oliver and Snodderly agreed to assist defendant in his plan and returned to his apartment with him to learn the details and get supplies. They drove back to Toledo and all spent the night at Snodderly's house. It was not until that point, when they had the opportunity to discuss the macabre details of defendant's plan while he was sleeping on their couch, that Oliver and Snodderly secretly agreed that they had to find a way to withdraw from the plan. Instead, they decided to involve the police. The following day when defendant drove them to Clark's residence in furtherance of his plot to kidnap and imprison Clark, Snodderly and Oliver informed the police of the plan. After viewing the evidence in the light most favorable to the prosecution, we conclude that the prosecutor proved the elements of conspiracy to commit unlawful imprisonment beyond a reasonable doubt.

"A person who solicits another person to commit a felony, or who solicits another person to do or omit to do an act which if completed would constitute a felony" is guilty of a felony. MCL 750.157b(3). Pursuant to MCL 750.157b(1), "'solicit' means to offer to give, promise to give, or give any money, services, or anything of value, or to forgive or promise to forgive a debt or obligation." "Solicitation is complete when the solicitation is made." *People v Crawford*, 232 Mich App 608, 616; 591 NW2d 669 (1998). "Actual incitement is not necessary for conviction." *Id*. There is overwhelming evidence in the record that defendant solicited Snodderly and Oliver to "to kidnap [Clark], go in and drag her out the back door and throw her in [defendant's] trunk and let him have his way with her." The applicable statute, MCL 750.157b(1), only requires that a defendant "offer to give" or "promise to give" something of value to another person. Both Snodderly and Oliver testified that defendant promised to pay them for the job in cash and pills as well as the opportunity to steal from the warehouse near his apartment. Therefore, the prosecution presented sufficient evidence from which a reasonable jury could conclude guilt beyond a reasonable doubt.[5]

[5] Defendant does not challenge the sufficiency of the evidence supporting his conviction of using a computer to commit solicitation of unlawful imprisonment, MCL 752.797(3)(e).

Pursuant to Supreme Court Administrative Order 2004-4, defendant has also filed a Standard 4 brief wherein he has raised several additional issues on appeal.

First, defendant argues that he is entitled to resentencing where the trial court predetermined the maximum sentence and did not exercise discretion in setting the maximum term under the habitual offender statute. Defendant ignores the following discussion that occurred on the record at sentencing:

> *The Court.* Aside from the report itself, [defense counsel], do you wish to – Let's see at this point I should indicate that we had a discussion in chambers with counsel and with the prosecuting attorney. And there was some discussion as it relates to, if the court possibly would exceed the guidelines here.
>
> We have a total PRV's of 160. The PRV range only goes up to 75.
>
> *Defense Counsel.* I understand.
>
> *The Court.* There are a number of reasons to exceed the guidelines. And the court has detailed a number of those including the inadequacy of the guidelines for a statute that has the maximum penalty of life imprisonment and PRV's that exceed the maximum by over two times.
>
> However, the discussion has resulted in an agreement that the defendant in this case would enter into a *Cobb*'s Agreement and the prosecutor would as well, that he be given a penalty of life imprisonment, which would make him eligible for parole at an earlier time than might otherwise be the case either should he be sentenced today or should the court exceed the guidelines as well.
>
> *Defense Counsel.* That's correct.
>
> *The Court.* In addition, the agreement would also run all of the sentences concurrent to each other so that there would be no stacking on the last charge.
>
> *Defense Counsel.* With the computer. That's my understanding and that's [defendant's].
>
> *The Court.* [Defendant], is that your agreement as well?
>
> *Defendant.* Yes, Your Honor.
>
> *Prosecutor.* And that's the Peoples'.

The record is clear that both defense counsel and defendant himself agreed on the record that defendant's sentence of concurrent life sentences on all four felony convictions was in accord with the *Cobbs* agreement. Defendant has not shown that the trial court misinterpreted or misapplied the *Cobbs* agreement. As such, defendant has not shown error on appeal.

Next, defendant argues in pro per, that he is entitled to correction of the PSIR to delete statements relating to defendant's alleged sexual assault of Clark. We review a trial court's response to a claim of inaccuracies in the presentence report for an abuse of discretion. *People v Uphaus (On Remand)*, 278 Mich App 174, 181; 748 NW2d 899 (2008). At sentencing, either party may challenge the accuracy or relevancy of any information contained in the presentence report. MCL 771.14(6); MCR 6.425(E)(1)(b); *People v Lloyd*, 284 Mich App 703, 705-706; 774 NW2d 347 (2009). If the trial court "finds on the record that the challenged information is inaccurate or irrelevant, that finding shall be made a part of the record, the presentence investigation report shall be amended, and the inaccurate or irrelevant information shall be stricken accordingly before the report is transmitted to the department of corrections." MCL 771.14(6).

During sentencing defense counsel raised objections on the basis of relevancy with regard to references to defendant's rape of Clark in the PSIR. Twice the trial court ruled that the information was relevant and should remain in the PSIR. The trial court had held that any references to criminal sexual assault were not relevant or admissible during trial, but determined that for purposes of sentencing and the PSIR, the references were relevant and appropriate. The trial court did not abuse its discretion because Clark was the intended victim of the instant convictions. The criminal sexual assault took place only weeks before the instant offenses and provides motivation for his plan to find, kidnap, and once again victimize Clark. And defendant was, by all accounts, obsessed with Clark. He possessed nude images of her, could not stop talking about her, and went so far as to hang missing persons posters to find her when he did not know where she was living. Considering the circumstances, the references were relevant and properly included. Defendant has not shown error.

Finally, defendant argues that the cumulative effect of defense counsel's ineffective assistance of counsel denied him a fair trial. Based on our foregoing conclusions regarding alleged errors, there is no basis to reverse on a "cumulative effect" argument. See *People v Ackerman*, 257 Mich App 434, 454; 669 NW2d 818 (2003).

Affirmed.

/s/ Henry William Saad
/s/ Kirsten Frank Kelly
/s/ Pat M. Donofrio