STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED July 24, 2018
v	No. 338305 Ingham Circuit Court
ASHLEY VERNELL HENRY, Defendant-Appellant.	LC No. 12-000732-FH

Before: RONAYNE KRAUSE, P.J., and GLEICHER and LETICA, JJ.

PER CURIAM.

Following a brief hearing, the circuit court revoked Ashley Vernell Henry's probation and imposed a prison sentence. Henry raises several challenges to the probation revocation proceedings and his ultimate sentence. We affirm Henry's probation revocation conviction and his term of 30 months to 20 years imprisonment. However, we remand to the trial court to correct several errors affecting other aspects of Henry's judgment of sentence.

I. BACKGROUND

In 2012, Henry pleaded guilty to possession with intent to deliver cocaine. Henry spent three months in jail and then was placed on probation. Henry violated probation three times by using alcohol and marijuana. At a February 26, 2016 probation violation hearing, the court warned Henry that any further infractions would result in a prison sentence. Approximately one week later, Henry threatened the mother of his child, Latia Weber, with a gun and shot at her new boyfriend's car. Weber told the responding officer and Henry's probation officer, Jessica Farr, that Henry appeared at her home at around 2:00 a.m., "aggressively kicking, banging on the door," demanding entrance. Weber reported that Henry possessed a handgun and that he fired "some shots in the air", threatened Weber's boyfriend, and then shot at his vehicle. By the time of the April 5, 2016 probation revocation hearing, Weber had recanted her statements. She told the court that she saw Henry in a parking lot outside her residence and that she heard gunshots, but that she was not certain who fired the gun.

At the probation revocation hearing, Farr indicated that the Lansing police detective in charge of the investigation had forwarded a request to the prosecutor to charge Henry with reckless discharge of a firearm and felon in possession of a firearm in connection with his attack on Weber, but the prosecutor's office had yet to act. The court responded, "So as to count two, I cannot take a plea on that even if that's his intention, because anything he says or writes can be

used against him, so count two, we'll have to hold it." The court similarly noted that the second count might have to be held. Defense counsel indicated that he was "prepared to run a hearing" on the probation violation and agreed that he was "waiving further arraignment" on the probation violation.

The court then indicated that Henry was pleading not guilty to the probation violation at that time. She indicated that it would be set for a hearing "when the other matter comes up"—the criminal charges for his attack on Weber. The court continued,

> [H]ere's the problem, since these two run together, again anything, sir, that you say or write can be used against you, so my understanding, without knowing anything about what happened here, is that once we make a record of this the people can, and I assure you they will, use that in the other file which you've not been arraigned on but will be soon. So since I have this open it's likely that the file will come to me. Do I need you to look at this as a package situation? It doesn't mean you're giving up any rights, it just means I'm not letting you proceed to preserve your rights, because this seems to me, without having read the felony complaint, will affect your rights and I don't want to do that on either file, so I have to put this out maybe six weeks or so.

Defense counsel argued that the prosecutor might not even bring charges. The court stated, "I understand that, but it is highly unlikely" and it was "not going to risk his right of self incrimination." The court inquired of defense counsel, "Do you think we ought to do that?" Counsel agreed that the court should not ask Henry to risk his rights but indicated, "At the same time it's not the defense's intention to put Mr. Henry on the stand."

The court took a brief recess at that time as the prosecutor still had not appeared in the courtroom. After the prosecutor met with defense counsel, defense counsel stated, "We're still at a little kind of disagreement as far as proceeding." The prosecutor explained:

> If there was a police report made and it was submitted to the prosecutor's office, I have looked in the system, it's not scanned in yet. That's not to say it wouldn't be in the future. There is a chance that it's just backed up right now and it will come through, and if that's the case, it would be in the defendant's interest and in the interest of judicial economy to adjourn this hearing so that both cases can be heard together at a time in the future, so it's the people's request to adjourn, I guess, this hearing for a few weeks to see whether or not this case catches up, understanding that [Henry] is in custody right now for the violation for which I guess we're here for today.
>
> I can't speak as to his bond conditions. I know the victim is present in the courtroom but perhaps a no contact provision added to his bond conditions. . . .
>
> The other option is holding the hearing, [Henry] could maintain his right to remain silent. However, we're taking testimony on a case that may or may not come through in a couple weeks so I just don't think that would make the most

> sense right now, so the people would request the hearing be adjourned just to see if this case is issued and to join them both together in the future.

Defense counsel objected to an adjournment as Henry was then incarcerated because of the probation violation and "he has been kind of waiting a while to move forward on this." Henry would only agree to an adjournment if he was released on bond in the interim. Absent bond, Henry "would ask to go forward since we're ready today."

The court declined to release Henry on bond given his poor record on probation. "He has violated and violated and violated. Alcohol, marijuana, . . . it's not his first time in front of me. In fact, I had told him the last time he was in front of me that if he didn't straighten out, I promised him prison." Henry's criminal conduct had escalated and the court wanted him incarcerated until both the probation violation and the criminal matter could be resolved. Given that information, defense counsel asked that the probation violation hearing continue. The prosecution then called Weber and Farr to the stand. Weber tried to recant her allegations, but Farr described Weber's statements on the morning following the attack at her home. The court believed Weber's earlier statements and found that Henry had violated the terms of his probation.

The prosecutor subsequently charged Henry with weapons-related offenses and that matter moved toward trial. For his probation violation, the court sentenced Henry to 30 months to 20 years' imprisonment.

II. RIGHT AGAINST SELF-INCRIMINATION

Henry contends that the trial court incorrectly believed that his statements at the probation violation hearing could be used against him at the subsequent criminal trial for his weapons charges, and therefore erroneously denied him the opportunity to testify at the hearing. This contention is based on this Court's 1978 opinion in *People v Rocha*, 86 Mich App 497, 512; 272 NW2d 699 (1978).

In *Rocha*, 86 Mich Appat 512, this Court adopted the reasoning of *People v Coleman*, 13 Cal 3d 867, 889; 120 Cal Rptr 384; 533 P2d 1024 (1975), and held on public policy grounds that

> "the testimony of a probationer at a probation revocation hearing held prior to the disposition of criminal charges arising out of the alleged violation of the conditions of his probation, and any evidence derived from such testimony, is inadmissible against the probationer during subsequent proceedings on the related criminal charges, save for purposes of impeachment or rebuttal. . . ."

The trial court advised Henry that anything he said at the probation revocation hearing could be used against him at a later criminal trial connected to the late night shooting at Weber's home. This was inconsistent with *Rocha*. However, we need not consider this challenge as Henry waived any error.

"[W]aiver is the intentional relinquishment or abandonment of a known right." *United States v Olano*, 507 US 725, 733; 113 S Ct 1770; 123 L Ed 2d 508 (1993) (quotation marks and citations omitted). As explained in *Rocha*, 86 Mich App at 503, the California Supreme Court

held in *Coleman* that the prosecutor must grant immunity to the probation violator at a subsequent criminal trial or the court must hold the probation violation hearing after the criminal trial. Henry's counsel specifically indicated that he did not intend to call Henry as a witness. Accordingly, the court had no reason to offer immunity of any type. Moreover, the prosecutor suggested adjourning the probation revocation hearing so it could be held concurrently with or after any potential criminal trial. The court agreed with that suggestion but Henry expressly rejected it. Henry did not want to wait in jail until the prosecutor decided whether to proceed with criminal charges. He also likely believed he would walk away from all charges and be found innocent of the probation violation given Weber's recantation of her earlier accusations.

Henry rolled the dice and lost, but he cannot now disavow his waiver and claim error. Accordingly, Henry is not entitled to relief.

III. HEARSAY AND OPINION EVIDENCE

Henry further contends that the trial court improperly found him guilty of a probation violation based on inadmissible hearsay and opinion testimony. We generally review for an abuse of discretion a trial court's decision to admit evidence at a probation revocation hearing. *People v Breeding*, 284 Mich App 471, 479; 772 NW2d 810 (2009). Henry failed to object at the hearing, however, and our review is limited to plain error affecting his substantial rights. *Id.* at 483.

> [T]he granting of probation is a matter of grace conferring no vested right to its continuance. If during the probation period the sentencing court determines that the probationer is likely again to engage in an offensive or criminal course of conduct or that the public good requires revocation of probation, the court may revoke probation. [MCL 771.4.]

To this end, "Hearings on the revocation shall be summary and informal and not subject to the rules of evidence or of pleadings applicable in criminal trials." *Id.* A trial court "need not apply the rules of evidence except those pertaining to privileges" in a probation revocation hearing. MCR 6.445(E)(1); see also MRE 1101(b)(3) (stating that the rules other than those pertaining to privileges do not apply in proceedings granting or revoking probation).

However, a probationer still has the "right to confront witnesses in a probation revocation hearing." *Breeding*, 284 Mich App at 483. MCR 6.445(E)(1) specifically recognizes that "[t]he probationer has the right to be present at the hearing, to present evidence, and to examine and cross-examine witnesses." The minimum requirements of due process at probation revocation hearings include " 'the right to confront and cross-examine adverse witnesses (unless the hearing officer specifically finds good cause for not allowing confrontation.' " *Breeding*, 284 Mich App at 484, quoting *Morrissey v Brewer*, 408 US 471, 489; 92 S Ct 2593; 33 L Ed 2d 484 (1972) (emphasis omitted).

In *Breeding*, 284 Mich App at 485, this Court noted that other jurisdictions have adopted one of two tests to determine the admissibility of hearsay testimony at probation revocation hearings: "a balancing test that weighs the probationer's interest in confronting a witness against the interests of the State in not producing the witness" or a determination of "whether the

evidence reaches a certain level of reliability, or if it has a substantial guarantee of trustworthiness." (Quotation marks and citations omitted.) However, the *Breeding* Court did not decide between the two tests as the defendant failed to preserve his challenge in the lower court. *Id*. at 485-486. While neither test must be adopted by this Court in the future, the same lack of preservation is present here, eliminating any need to reach that issue. Henry did not object to the use of the police report or Farr's recitation of Weber's statements against him. Henry was able to cross-examine Weber and could question her about the statements Farr described. And Henry never requested that the investigating officer who prepared the report be presented at the hearing. Even if such a request was made, the court would not be required to grant it. MRE 1101(b)(3) would still control and the rules of evidence would not apply.

In any event, the admission of the challenged evidence did not amount to plain error affecting Henry's substantial rights. "To establish that his substantial rights were affected, defendant must establish an error affecting the trial court's decision that defendant violated his probation." *Id*. at 487. To revoke an individual's probation, the prosecution must prove the violation "on verified facts in the record." *Id*. We must view the evidence "in a light most favorable to the prosecution" to determine if "a rational trier of fact [could] find a probation violation by a preponderance of the evidence." *Id*. In doing so, we must defer to the trial court's assessment of witness credibility and evidentiary weight. *Id*.

The trial court heard Farr's testimony about Weber's statements the day following Henry's offense. At that time, Weber described that Henry came to her door in the middle of the night, threatened her and her new boyfriend with a gun, and then shot at her boyfriend's car. The police report corroborated that version of events. At the hearing, however, Weber changed her story and claimed that she only saw Henry outside of her residence in a parking lot and that she heard gunshots but did not know who fired. The trial court had a long history with Henry given his various probation violations over the years. The court was able to observe the witnesses and determined that Weber was lying at the hearing, and not when she spoke to Farr and the police close in time to the events. Ultimately, there was sufficient information for the trial court to find a probation violation and we discern no error warranting relief.

Henry further claims that the trial court improperly allowed Farr to opine on the credibility of Weber. Specifically, Farr testified that Weber was "acting like a true victim right now" by changing her story out of fear of Henry. The rules of evidence regarding opinion testimony do not apply at probation revocation hearings. See MCR 6.445(E)(1); MRE 1101(b)(3). But again, the trial court was the judge of witness credibility and the court independently determined that Weber had recanted her story out of fear. We have no grounds to interfere with that assessment.

IV. SENTENCING ISSUES

Henry raises a series of challenges to the sentence imposed for his probation violation.

A. DEPARTURE SENTENCE

First, Henry notes that the minimum sentencing guidelines range for his original offense was 0 to 17 months. As his guidelines fell within an intermediate sanction cell, Henry contends

that the maximum sentence the court could have imposed was one year in county jail. The court departed from that guideline without explanation, Henry complains.

Before imposing sentence, the court stated:

> I understand that one of your primary concerns now is your son. The problem is, especially you've acknowledged that you've come from a bit of a rough background, instead of taking that as a learning lesson and playing [sic] it forward in a positive way, you have fallen into the trap of criminality, continued bad behavior, and you're not a role model, so everybody can say you should be out there, be with your son, and be a role model. You're not ready to be a role model. You've developed quite a criminal history, quite an assaultive behavior, and then you add guns on top of it. It's scary sir. That means you're being a danger not just to the community, which is, of course, my concern, but my concern is also to the safety of your family and your young son.

The court continued that it did not think Henry was a "bad person"; rather, he was "a good guy misdirected."

> [Y]ou can pull it altogether and be there for your family, but first you have to be there for yourself, and what you've allowed yourself to do is to get in a whole lot of very bad criminal behavior, which subjects yourself, your family, and the community to extreme danger, and on probation you are supposed to do the right things, heal, demonstrate that you're worthy of being in the community, making it a safer place, and you've demonstrated to me exactly the opposite.
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> At the time of sentencing . . . there were pending charges of failure to obey a police officer. . . . And also domestic assault. . . . Now, I don't know the outcomes of that, but that history alone, that pending at the same time you had this delivery, . . . which is a 20 year felony, and now you violated probation by being involved in threatening behavior towards [Weber], and then you have a new charge while on probation, so you're not learning your lessons. That is a problem, significant problem, which is why I had placed in your file on my own personal note, next violation, prison, and I promised you prison. I have to keep my promise, sir.

Henry interjected that the court had also promised it would suspend the remainder of his jail time when he was first sentenced in 2012. The court reminded Henry that that promise only applied if he successfully completed probation, which he had not. Rather,

> [B]ecause of the continued criminality, because you need some more time to rethink and reevaluate and put yourself on the proper road, which I think you're on your way to doing, I am revoking probation. I am sentencing you to prison to a term of 30 months to 20 years. . . .

Henry's 30-month minimum sentence exceeded the sentencing guidelines range for his 2012 drug offense. Pursuant to MCL 769.34(2), the legislative guidelines apply "even if the sentence follows the imposition and revocation of probation." *People v Hendricks*, 472 Mich

555, 557; 697 NW2d 511 (2005). "If a probation order is revoked, the court *may* sentence the probationer in the same manner and to the same penalty as the court might have done if the probation order had never been made." MCL 771.4 (emphasis added). "While the sentencing court *may* sentence the probationer in the same manner and to the same penalty, nothing in the statute requires it to do so." *Hendricks*, 472 Mich at 562 (emphasis in original). So, although the court is actually "resentencing on the original offense," "it is perfectly acceptable to consider postprobation factors in determining whether substantial and compelling reasons exist to warrant an upward departure from the legislative sentencing guidelines." *Id*. at 562-563.

Of course, a court no longer needs to cite substantial and compelling reasons to depart upward from the recommended minimum sentencing guidelines. *People v Lockridge*, 498 Mich 358, 391; 870 NW2d 502 (2015). Instead, we must determine whether a departure sentence is reasonable based on the principle of proportionality outlined in *People v Milbourn*, 435 Mich 630; 461 NW2d 1 (1990). *People v Steanhouse*, 500 Mich 453, 462, 471; 902 NW2d 327 (2017). Ultimately, our review is for an abuse of discretion. *Id*. at 471.

The trial court acted within its discretion in sentencing Henry to a minimum term of 30 months as that sentence was proportionate to the offense and the offender. Henry was on probation when he delivered less than 50 grams of cocaine in 2012. He operated a vehicle while intoxicated in 2013, which led to a criminal conviction in 2014. He tested positive for marijuana on June 2, 2015, used alcohol and marijuana on January 1 and 19, 2016, and tested positive for marijuana again on February 24, 2016. Henry then brandished a gun and threatened the mother of his child. Given the number of post-conviction transgressions and the severity of the final probation violation, the court certainly had grounds to increase the low sentence originally given.

The court also adequately explained why a 30-month sentence was more proportionate than a 12-month sentence. Henry had not learned from programming during probation. He had become a danger to the community and his behavior placed his child at risk. The court had already increased Henry's probationary period from three to five years to no avail. Imposing a 2½-year sentence, rather than a 17-month minimum sentence was proportionate to the offense and the offender. Henry is therefore not entitled to resentencing.

B. COURT COSTS

Henry next asserts that the trial court erroneously assessed court costs and imposed economic penalties against him. As part of Henry's original sentence in 2012, the court ordered him to pay $68 in state costs, $130 toward the crime victim's fund, $600 in court costs, $200 in attorney fees, and $200 in fines, a total of $1,198. Two days after Henry's sentencing for the current probation violation, the court entered an order to remit the remaining $600 balance from this amount. Contrary to Henry's appellate argument, this was not an economic penalty imposed "after [he] left the courtroom"; this was part and parcel of the 2012 judgment of sentence.

Henry contends that the court was not statutorily permitted to charge him with court costs. MCL 771.3(5) provides, "If the court requires the probationer to pay costs under subsection (2), the costs shall be limited to expenses specifically incurred in prosecuting the defendant or providing legal assistance to the defendant and supervision of the probationer." MCL 769.1k also permits a court to impose certain costs and fees against a defendant. MCL

769.1k(3) provides that these costs and fees may be assessed "even if the defendant is placed on probation, probation is revoked, or the defendant is discharged from probation." In imposing court costs, however, the court may only assess those costs "reasonably related to the actual costs incurred by the trial court without separately calculating those costs involved in the particular case." MCL 769.1k(1)(b)(*iii*). The court must provide a factual basis for the costs imposed to comply with the statute. *People v Konopka*, 309 Mich App 345, 359-360; 869 NW2d 651 (2015).

The court did not state on the record a factual basis to support that the costs imposed were reasonably related to the actual costs incurred by the court system. Accordingly, although the court was permitted to impose such costs, we must remand for the trial court to articulate its reasoning in this regard.

C. GOOD TIME CREDIT

Henry further challenges the court's calculation of his credit for time served. When Henry was originally sentenced in 2012, the court ordered him to serve 120 days in jail with credit for 39 days already served. He then served 81 more days, for a total of 120 days' incarceration. Henry contends that during this 120-day incarceration, he earned 45 days of "good time credit."[1] Henry did not raise this issue during or close in time to his 120-day incarceration.

MCL 51.282(2) provides that a prisoner is entitled to one day of "good time" credit for every six days of incarceration during which "there are no violations of the rules and regulations." In *People v Resler*, 210 Mich App 24, 26-27; 532 NW2d 907 (1994), this Court held that a court may not withdraw a defendant's good time credit after probation revocation. The Legislature provided for the extinguishment of good time credit after a parole violation, but not a probation violation. Extinguishing good time credit in a situation not contemplated by the Legislature increases the punishment of the defendant in a way not intended by the Legislature. This violates the Double Jeopardy Clause. *Id*.

Henry did not raise his challenge until his second motion for sentence correction following the probation-revocation sentencing hearing. The court declined to resolve the issue, stating that it would not give Henry any good time credit: "Appeal me. . . . I don't deal with that." The trial court's failure to consider this issue on the record has left us at a disadvantage. We assume that if Henry had been entitled to good time credit, the Ingham County Jail would have released him before the expiration of his initial 120-day jail sentence. Further, even if Henry had been entitled to 45 days' credit, that number is subsumed in the 120 days' credit the court awarded him against his probation-revocation sentence. And if Henry is seeking to shave 45 days of prison time off his current sentence, we cannot grant that relief as Henry has since been released on parole. Accordingly, Henry is not entitled to any additional relief in this regard.

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[1] We note that Henry was released on parole for his probation violation conviction on May 1, 2018. We further note that Henry does not claim that good time credit accrued during any period of incarceration following this initial 120 days.

D. CORRECTIONS OF FACTS IN THE PSIR

At the 2012 sentencing hearing, Henry's attorney objected to a statement in the presentence investigation report that Henry was affiliated with a gang. The prosecutor claimed that he had "reliable information" that Henry was involved in two separate gangs and that Henry had admitted gang membership in the past. The court warned Henry that if he was lying in court about gang membership, he could be charged with perjury or contempt. The court declined to resolve the issue, stating "I don't know. It's not my job, so my job is just to advise you of your rights." Henry raised the issue again in a January 27, 2017 motion, but the trial court merely directed him to appeal the issue.

We review for an abuse of discretion a trial court's response to a defendant's challenge to the accuracy of information in the PSIR. *People v Waclawski*, 286 Mich App 634, 689; 780 NW2d 321 (2009). The court must actually exercise its discretion. When a challenge is made, the court must give the parties an opportunity to be heard and then "must make a finding as to the challenge or determine that the finding is unnecessary because the court will not consider it during sentencing." *Id*. at 689-690. The court must state on the record whether it finds the information inaccurate or, if uncertain about the accuracy, whether the court ignored the information in imposing sentence. *People v LaCosse*, 499 Mich 873, 873; 876 NW2d 242 (2016). The court in this case did not decide the issue nor did it state that it would ignore the gang-affiliation information when imposing sentence. We therefore must remand for the trial court to address the issue on the record.

V. ASSISTANCE OF COUNSEL

Henry contends that he and his appointed attorney had a fundamental breakdown in their relationship and that the court should have appointed substitute counsel. Henry contends that he never agreed with his attorney's plan to keep him off the witness stand. He further asserts that the court should have sua sponte recognized the problem when his counsel stated at the probation revocation hearing, "We're still at a little kind of disagreement as far as proceeding." Additionally, Henry asserts that counsel was ineffective in failing to understand the law regarding the use of his testimony at a probation revocation hearing, failing to object to the admission of hearsay and opinion testimony at that hearing, and failing to adequately raise his current challenges at the sentencing hearing.

Henry filed a motion requesting a new trial or a *Ginther*[2] hearing, but the trial court denied it. Absent a hearing, our review is limited to mistakes apparent on the existing record. *People v Solloway*, 316 Mich App 174, 188; 891 NW2d 255 (2016). " '[I]t has long been recognized that the right to counsel is the right to the effective assistance of counsel.' " *United States v Cronic*, 466 US 648, 654; 104 S Ct 2039; 80 L Ed 2d 657 (1984), quoting *McMann v Richardson*, 397 US 759, 777 n 14; 90 S Ct 1441; 25 L Ed 2d 763 (1970). In *Strickland v Washington*, 466 US 668, 687; 104 S Ct 2052; 80 L Ed 2d 674 (1984), the United States Supreme Court held that a defendant's ineffective assistance claim includes two components:

[2] *People v Ginther*, 390 Mich 436; 212 NW2d 922 (1973).

"First, the defendant must show that counsel's performance was deficient. . . . Second, the defendant must show that the deficient performance prejudiced the defense." To establish the first component, a defendant must show that counsel's performance fell below an objective standard of reasonableness under prevailing professional norms. *People v Solomonson*, 261 Mich App 657, 663; 683 NW2d 761 (2004). With respect to the prejudice aspect, the defendant must demonstrate a reasonable probability that but for counsel's errors the result of the proceedings would have differed. *Id*. at 663-664. The defendant must overcome the strong presumptions that his "counsel's conduct falls within the wide range of professional assistance," and that his counsel's actions represented "sound trial strategy." *Strickland*, 466 US at 689 (quotation marks and citation omitted).

First and foremost, we disagree with Henry's interpretation of his attorney's statement at the probation revocation hearing as depicting a breakdown in the attorney-client relationship. Rather, counsel indicated that there was a disagreement about how to proceed only after speaking to the prosecutor. The prosecutor continued to argue in favor of adjourning the probation revocation hearing until after a potential criminal trial on the underlying conduct while defense counsel advocated for moving forward with the hearing. The disagreement was between the state and the defense, not defense counsel and his client. Accordingly, the court had no reason to intuit a problem and to sua sponte appoint substitute counsel.

Yet, defense counsel clearly did not understand the law pertaining to the use of Henry's potential statements at the probation revocation hearing at a future criminal trial. Accordingly, counsel did not adequately object to the court's misstatement of law. This, in turn, potentially led counsel to decide not to present Henry's testimony. However, Henry cannot establish the necessary prejudice to warrant relief. "Because the defendant bears the burden of demonstrating both deficient performance and prejudice, the defendant necessarily bears the burden of establishing the factual predicate for his claim." *People v Carbin*, 463 Mich 590, 600; 623 NW2d 884 (2000). Henry presented an affidavit avowing that he "wanted to testify at the probation violation hearing" and but for his attorney's erroneous advice, he would have taken the stand "and presented a defense to the charges." Henry has made no attempt to describe his defense or his potential testimony. Accordingly, we have no ground to find prejudice.

Counsel was not ineffective in failing to object to the admission of the police report, Farr's testimony about Weber's statements, and Farr's testimony that she believed Weber's account on the day after the alleged attack. As noted, this evidence was admissible at the probation revocation hearing. Defense counsel cannot be considered ineffective for failing to present meritless objections. *People v Ericksen*, 288 Mich App 192, 201; 793 NW2d 120 (2010).

Defense counsel should have raised additional challenges to the terms of Henry's sentence, and should have more fervently argued for those errors he did note. As a result, the trial court made errors at the 2012 sentencing that were not corrected during the 2016 sentencing on the probation revocation or in post-sentencing motions. Specifically, the trial court failed to articulate a factual basis for assessing court costs and to either correct inaccurate information in the PSIR or indicate that it would not rely on that information in imposing sentence. However, the only relief that Henry is entitled to based on these errors is remand for further consideration. We have already granted that relief.

We affirm, but remand to the trial court (1) to articulate a factual basis for the assessment of court costs, and (2) to make record consideration of Henry's challenge to information in his PSIR. We do not retain jurisdiction.

/s/ Amy Ronayne Krause
/s/ Elizabeth L. Gleicher
/s/ Anica Letica