

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

RONALD ARCHER DRISKELL,

Defendant-Appellant.

UNPUBLISHED

August 26, 2021

No. 354040

Allegan Circuit Court

LC No. 19-022405-FH

Before: TUKEL, P.J., and K. F. KELLY and GADOLA, JJ.

PER CURIAM.

Defendant, Ronald Archer Driskell, pleaded guilty to operating a vehicle while intoxicated, third offense, MCL 257.625(1)(a) and (9)(c). The trial court sentenced defendant, as a third-offense habitual offender, MCL 769.11, to serve 34 to 120 months' imprisonment. Defendant appeals his sentence by delayed leave granted.¹ We affirm.

I. FACTS

Defendant's conviction arises from an incident on December 4, 2018. On that day, defendant drove a motor vehicle owned by his son after drinking alcohol at Gun Lake Casino. After defendant left the casino, security observed defendant driving around the casino parking lot, where he almost hit parked vehicles. Casino security also observed defendant drive onto a local highway. In response to defendant's conduct, casino security contacted Gun Lake police. A Gun Lake police officer observed defendant's vehicle swerving, crossing the center line, and driving down the middle of the highway. Eventually, the officer pulled defendant over. At that time, defendant admitted that he had been drinking alcohol and failed field sobriety tests. Defendant's preliminary breath test registered a 0.123 blood alcohol content (BAC). The officer then detained

¹ *People v Driskell*, unpublished order of the Court of Appeals, entered September 10, 2020 (Docket No. 354040).

defendant in handcuffs and transported him to the county jail. A blood draw later showed defendant had a BAC of 0.132.

Defendant pleaded guilty to OWI-third. At sentencing, defendant's attorney asked the trial court to correct the presentence investigation report (PSIR) to show defendant's psychiatric history. Defendant's attorney also requested that defendant's PSIR be corrected to show that one of his prior convictions resulted in a suspended sentence. The trial court allowed both amendments. After raising these two challenges, defendant's trial attorney and defendant himself affirmed the remaining portions of defendant's PSIR to the trial court:

Mr. McEwen [defense counsel]: Thank you, your Honor.

The Court: Thank you. All right. So no other issues with the presentence report, Mr. McEwen?

Mr. McEwen [defense counsel]: No other additions or corrections, your Honor.

* * *

The Court: Thank you. Mr. Driskell, have you reviewed the presentence report?

The Defendant: Yes, your Honor.

The Court: And other than the things that your attorney mentioned is there anything that you feel that needs to be corrected in the report?

The Defendant: No, sir.

The trial court sentenced defendant as a third-offense habitual offender to serve 34 to 120 months' imprisonment.

Subsequently, defendant filed a motion to correct his PSIR and for resentencing in the trial court. Defendant argued that his PSIR contained irrelevant and prejudicial information,² and that mitigation evidence was available that had to be included in the PSIR or placed on the record. The trial court granted relief to defendant for some challenges raised in his motion, but denied defendant's other requested changes to his PSIR, as well as his motion for resentencing. Defendant now appeals to this Court.

² Specifically, defendant alleged bias because of the absence of a complete Correctional Offender Management Profiling for Alternative Sanctions (COMPAS) assessment. Defendant also challenged the description of his income, and his parole status at the time he committed other alcohol-related offenses. In addition, defendant disputed the reporting of past sentences, and alleged speculation and bias regarding inferences about his cognitive abilities. Defendant further contended that the PSIR author made false statements and that prior convictions should have been removed from his PSIR.

II. ANALYSIS

On appeal, defendant presents the same arguments as those he argued before the trial court in his motion to correct the PSIR and for resentencing. In addition, defendant contends that the trial court's response to his motion to correct the PSIR and for resentencing was inadequate. Defendant further contends that his sentence remains disproportionate.

After reviewing the trial court record, we decline to address defendant's PSIR challenges because he waived his right to appellate review at sentencing. Waiver is "the intentional relinquishment or abandonment of a known right." *People v Carter*, 462 Mich 206, 215; 612 NW2d 144 (2000) (quotation marks and citations omitted). Waiver extinguishes any error and therefore precludes appellate review. *Id.* at 215. An issue is deemed waived if it is clear from the whole record that a defendant expressed satisfaction with a trial court's ruling. *People v Hershey*, 303 Mich App 330, 351; 844 NW2d 127 (2013), citing *People v Kowalski*, 489 Mich 488, 503; 803 NW2d 200 (2011) (noting the importance of a defense counsel's explicit approval with a trial court decision when addressing the issue of waiver).

One example of waiver occurs when a defendant challenges the contents of their PSIR for the first time on appeal after declining to do so at sentencing. See *People v Sharp*, 192 Mich App 501; 481 NW2d 773 (1992). In such a case, this Court applies the plain language of Michigan's PSIR statute, which provides in relevant part:

At the time of sentencing, either party may challenge, on the record, the accuracy or relevancy of any information contained in the presentence investigation report. The court may order an adjournment to permit the parties to prepare a challenge or a response to a challenge. If the 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) (emphasis added).]

In *Sharp*, the defendant pleaded guilty to assault with intent to do great bodily harm less than murder and felonious assault. *Sharp*, 192 Mich App at 502. The defendant disputed various statements in his PSIR for the first time at a postsentencing hearing. *Id.* at 503. However, the trial court declined to grant relief to the defendant because the defendant and his attorney did not challenge the accuracy of his PSIR at sentencing. *Id.*

This Court agreed, and declined to review the issue regarding the accuracy of defendant's PSIR on appeal because defendant did not raise the issue at the time of his sentencing. *Id.* at 504. Our Court reasoned that "at sentencing neither defendant nor defense counsel indicated any objection to the accuracy" of the defendant's PSIR. *Id.* at 503. Our Court further reasoned that waiver was appropriate because "the defense specifically voiced its lack of objection to the accuracy" of the PSIR. *Id.* at 504.

In this case, just as in *Sharp*, defendant failed to object to the PSIR content he now challenges in this Court. Specifically, other than two amendments raised at sentencing, defendant and his attorney expressly approved his PSIR. Defendant's attorney explicitly confirmed to the

trial court that there were “[n]o other additions or corrections” with defendant’s PSIR. Similarly, defendant responded “[n]o” when asked whether he felt anything needed to be corrected. Thus, the affirmative language used by defendant and his attorney establish a valid waiver. Accordingly, we decline to address defendant’s challenges to his PSIR. Likewise, we also decline to address defendant’s arguments regarding the adequacy of the trial court’s response to the alleged PSIR errors raised in his postsentencing motion and on appeal.

Finally, defendant argues that his sentence is disproportionate because of his unique circumstances. Defendant supports this argument by citing his 33-year marriage to his late wife and his progress in therapy. Defendant also references what he regards as inaccurate statements, inferences, and assumptions in his PSIR. However, defendant fails to cite to any statute or relevant binding or persuasive case law³ that necessitates a thorough legal analysis by this Court. “It is not enough for an appellant in his brief simply to announce a position or assert an error and then leave it up to this Court to discover and rationalize the basis for his claims, or *unravel and elaborate for him his arguments, and then search for authority either to sustain or reject his position.*” *Mitcham v City of Detroit*, 355 Mich 182, 203; 94 NW2d 388 (1959) (emphasis added). The burden is on defendant to properly address and support his argument with legal authority; such cursory treatment signifies abandonment of this issue. See *People v Watson*, 245 Mich App 572, 587; 629 NW2d 411 (2001); *Prince v MacDonald*, 237 Mich App 186, 197; 602 NW2d 834 (1999).

Affirmed.

/s/ Jonathan Tukel
/s/ Kirsten Frank Kelly
/s/ Michael F. Gadola

³ Defendant generally cites two cases when addressing his argument of a disproportionate sentence: *People v Bowling*, 299 Mich App 552; 830 NW2d 800 (2013) and *People v Broden*, 428 Mich 343; 408 NW2d 789 (1987). Specifically, defendant cites *Bowling* to acknowledge that a sentence within the guidelines range is presumed proportionate. *Bowling*, 299 Mich App at 558. Defendant cites one footnote in *Broden* in which Chief Justice Riley of our Supreme Court stated that “a given sentence could conceivably represent an abuse of discretion to the extent that it shocks this Court’s conscience, even though it falls within the guidelines recommendation.” *Broden*, 428 Mich at 354 n 18. Defendant does not argue on appeal that his sentence should shock the conscience of this Court.