

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

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

KENDELL JERROD JONES, JR.,

Defendant-Appellant.

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UNPUBLISHED

May 13, 2021

No. 354072

Wayne Circuit Court

LC No. 19-007936-01-FC

Before: BOONSTRA, P.J., and CAVANAGH and GADOLA, JJ.

PER CURIAM.

Defendant pleaded guilty to second-degree murder, MCL 750.317, and possession of a firearm during the commission of a felony (felony-firearm), MCL 750.227b, pursuant to a plea and sentence agreement.<sup>1</sup> Defendant was sentenced to 27 to 60 years’ imprisonment for second-degree murder, and two years’ imprisonment for felony-firearm. Defendant appeals by delayed leave granted “limited to the issue of whether defendant is entitled to resentencing based on a presentence report not being prepared.”<sup>2</sup> We vacate defendant’s sentence and remand for resentencing following the preparation of a Presentence Investigation Report (PSIR).

On July 30, 2019, defendant used a handgun to shoot and kill Lorenzo Cortez Colbert. On February 13, 2020, defendant pleaded guilty to second-degree murder and felony-firearm. A sentencing hearing was held on March 2, 2020. As an initial matter, the trial court noted that defendant had refused to cooperate with the Michigan Department of Corrections (MDOC) in its efforts to prepare a PSIR. The trial court acknowledged that defendants have a right to have a PSIR prepared for sentencing, but that “[n]obody but [defendant] himself interfered with that right.” Specifically, a probation department agent reported that defendant “refused to be

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<sup>1</sup> In exchange, the prosecution dismissed defendant’s original charge of first-degree premeditated murder, MCL 750.316.

<sup>2</sup> *People v Kendell Jerrod Jones, Jr*, unpublished order of the Court of Appeals, entered September 3, 2020 (Docket No. 354072).

interviewed for his [PSIR],” and the agent “could not gather any information from a prior report to complete [defendant’s PSIR].” Therefore, the trial court proceeded with sentencing without a PSIR.

On appeal, defendant argues that MCL 771.14 and MCR 6.425(A) were violated because the trial court did not obtain and review a PSIR before sentencing him, and therefore, he is entitled to resentencing. We agree, as does the prosecution.

As defendant admits on appeal, he did not preserve this issue by challenging the trial court’s failure to obtain and review a PSIR at the time of sentencing; thus, the issue is unpreserved and our review is for plain error that affected substantial rights, i.e., was prejudicial. See *People v Cain*, 498 Mich 108, 116; 869 NW2d 829 (2015), citing *People v Carines*, 460 Mich 750, 763-764; 597 NW2d 130 (1999).

MCL 771.14(1) provides, in pertinent part, that “[b]efore the court sentences a person charged with a felony . . . the probation officer shall inquire into the antecedents, character, and circumstances of the person, and shall report in writing to the court.” Further, MCR 6.425(A)(1) provides, in pertinent part, that “[p]rior to sentencing, the probation officer must investigate the defendant’s background and character, verify material information, and report in writing the results of the investigation to the court.” See also *People v Hemphill*, 439 Mich 576, 579; 487 NW2d 152 (1992) (“A sentencing judge must use a presentence report.”). The language of MCL 771.14(1) and MCR 6.425(A)(1) is clear: before a person convicted of a felony is sentenced, the probation department must prepare a PSIR and report the results in writing for the trial court’s use at sentencing. A PSIR, which must include the information listed in MCL 771.14(2)(a)-(h) and MCR 6.425(A)(1), is necessary to ensure that the trial court imposes a punishment that is “tailored not only to the offense, but also to the offender.” *People v Miles*, 454 Mich 90, 97; 559 NW2d 299 (1997). The PSIR must be “reasonably updated” and include “complete, accurate, and reliable” information. *People v Triplett*, 407 Mich 510, 515; 287 NW2d 165 (1980). The PSIR must also include a computation of the recommended sentence range under the statutory sentencing guidelines through the scoring of offense variables and prior record variables. MCL 771.14(2)(e); MCL 777.21(1).

In this case, the trial court acknowledged that a PSIR was not prepared. In fact, the trial court unequivocally stated that the MDOC “totally dropped the ball here[,]” resulting in the trial court’s “inability to review a [PSIR].” Thus, the trial court was not able to properly consider the antecedents, character, and circumstances of defendant. Moreover, the prosecution, defense counsel, and defendant were not able to review the PSIR before sentencing. See MCL 771.14(5). The fact that a PSIR was not prepared means that defendant was not sentenced on the basis of “complete, accurate, and reliable” information, *Triplett*, 407 Mich at 515, thereby resulting in an invalid sentence. Further, MCL 771.14(9)(a) requires that a copy of the PSIR be transmitted to the Department of Corrections, which the department relies on to make decisions regarding a defendant’s status and placement, and thus, it is imperative that a complete and accurate PSIR be prepared. See *People v Uphaus (On Remand)*, 278 Mich App 174, 182; 748 NW2d 899 (2008) (citation omitted). Despite the plea and sentence agreement, the trial court’s imposition of defendant’s sentence without ensuring that the punishment was tailored to the offense and offender, *Miles*, 454 Mich at 97, constitutes error affecting defendant’s substantial rights.

Therefore, we vacate defendant's sentence and remand for resentencing following the preparation and consideration of a PSIR.

However, the trial court may impose the same sentence consistent with the terms of the sentence agreement if appropriate under the circumstances. As our Supreme Court explained in *People v Killebrew*, 416 Mich 189; 330 NW2d 834 (1982):

If the sentence bargain includes a sentence agreement, whereby the defendant agrees with the prosecuting attorney to plead guilty in exchange for a specific sentence disposition, the court must accept or reject the agreement or defer action until the judge has had the opportunity to consider the presentence report. In any event, the judge must have considered the presentence report before final acceptance of the sentence agreement.

If the judge feels that the agreed-upon disposition will serve the interests of justice, he may accept the agreement. The court shall then so inform the defendant, accept the plea, and embody the terms of the plea agreement in the judgment and sentence.

However, if the judge, in the exercise of his discretion, finds that the bargain is not tailored to reflect the particular circumstances of the case or the particular offender, he shall reject the plea at that time. The court shall then, on the record, inform the defendant that the court will not accept the plea or be bound by the agreement. [*Id.* at 206-207.]

Accordingly, defendant's sentence is vacated and this matter is remanded to the trial court for resentencing following the preparation of a PSIR. We do not retain jurisdiction.

/s/ Mark T. Boonstra  
/s/ Mark J. Cavanagh  
/s/ Michael F. Gadola