

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

GREGORY TODD TROTTER,

Defendant-Appellant.

UNPUBLISHED

March 21, 2013

No. 306458

Wayne Circuit Court

LC No. 11-004621-FC

Before: MURPHY, C.J., and O'CONNELL and BECKERING, JJ.

BECKERING, J. (*concurring in part and dissenting in part*).

I concur in the majority's opinion in all respects but one. Defendant contends—and the prosecution agrees—that the trial court abused its discretion by not resolving defendant's challenge to the accuracy of the information in his presentence investigation report (PSIR); thus, the case should be remanded for a determination of the validity of defendant's challenge. I agree.

“This Court reviews a trial court's response to a defendant's challenge to the accuracy of a PSIR for an abuse of discretion.” *People v Uphaus (On Remand)*, 278 Mich App 174, 181; 748 NW2d 899 (2008). “A challenge to the validity of information contained in the PSIR may be raised at sentencing.” *People v Lloyd*, 284 Mich App 703, 706; 774 NW2d 347 (2009). See also MCL 771.14(6). When a defendant challenges the accuracy of information in the PSIR, the trial court must respond. *Uphaus*, 278 Mich App at 182. The court may determine whether the information is accurate, accept the defendant's version, or disregard the challenged information. *People v Spanke*, 254 Mich App 642, 648; 658 NW2d 504 (2003). “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.” *Lloyd*, 284 Mich App at 705, quoting MCL 771.14(6). Because the Department of Corrections makes critical decisions on the basis of the PSIR, it “should accurately reflect any determination the sentencing judge has made concerning the accuracy or relevancy of the information contained in the report.” *Uphaus*, 278 Mich App at 182, quoting *People v Norman*, 148 Mich App 273, 275; 384 NW2d 147 (1986).

The PSIR section addressing defendant's description of the offense states, in part:

There are two other girls who said I raped them They are two crackheads [sic] who trade sex for crack. I operated a crack house. They wanted to have sex with me and, [sic] I took off my shirt you would see why women want to have sex with me.”

At sentencing, before the trial court announced the terms of defendant’s sentence, the following exchange occurred:

THE COURT: I imagine if your son or daughter were here in Court listening to the fact that you run drug houses and women trade sex with you for drugs [sic].

DEFENDANT: Excuse me.

THE COURT: You already had your chance.

THE DEFENDANT: I didn’t say that. You didn’t hear me say that.

THE COURT: That is in the report and nobody corrected it so I understood it as truth.

DEFENDANT: Because it’s in the report, it’s true?

THE COURT: *You and your attorney will get a chance to speak.* No one said that that statement was not true.

DEFENDANT: I’m telling you I didn’t say that. Just like I wanted a bench trial, I got a jury trial. Something’s wrong.

THE COURT: What’s wrong is what you did to this young lady. I assume you should probably stop talking.

DEFENDANT: Yes, sir.

THE COURT: I might reconsider making it consecutive.¹ You will be over 80 years old when it’s time for parole.

DEFENDANT: I will die in there. [Emphasis added.]

Immediately after this colloquy, the court announced the terms of defendant’s sentence and did not give defendant or his counsel another chance to speak, although defense counsel prompted a brief exchange about defendant receiving a copy of his file. It is clear from the court’s remarks that if defendant attempted to further address the issue without receiving the court’s permission,

¹ The prosecutor had referenced defendant’s alleged statement at sentencing when advocating for the imposition of consecutive sentences on the basis that defendant showed a lack of remorse.

he ran the risk that the trial court would impose consecutive instead of concurrent sentences, as was being advocated by the prosecution. Hence, I do not agree with the majority that this issue was either waived or forfeited. The record shows that the trial court did not respond to defendant's challenge to the PSIR's accuracy, which the court was required to do.² See *Lloyd*, 284 Mich App at 705; *Uphaus*, 278 Mich App at 182. Consequently, I agree with defendant and the prosecution that this case should be remanded to the trial court for a determination of the validity of defendant's challenge. See *Lloyd*, 284 Mich App at 706. If a preponderance of the evidence does not support the disputed information, then the court must amend the PSIR. *Id.* at 705.

/s/ Jane M. Beckering

² The majority notes that defendant's own attorney stated at sentencing that the alleged comments by defendant in the PSIR about two other women being crackheads and trading sex for crack were true. Read in context, defense counsel was responding to the prosecutor's use of the contested statements to show a lack of remorse. At issue is whether defendant made the statements attributed to him in the PSIR, and defendant, at the hearing, claimed he did not. As the prosecution points out, instead of resolving defendant's challenge to having made such statements, the trial court merely instructed defendant to stop talking.