

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

RAUL LUIS CASTILLO,

Defendant-Appellant.

UNPUBLISHED

May 23, 2013

No. 307853; 310150

Berrien Circuit Court

LC No. 2011-015354-FH;

1999-411411-FH

Before: SERVITTO, P.J., and WHITBECK and SHAPIRO, JJ.

PER CURIAM.

In docket no. 307853, defendant Raul Luis Castillo appeals as of right his plea-based conviction for third-degree criminal sexual conduct, MCL 750.520d(1)(a). In docket no. 310150, defendant appeals by leave granted his plea-based conviction for parental kidnapping and custodial interference, MCL 750.350a(1). These appeals were consolidated. We remand for correction of defendant's presentence information reports (PSIR), because the trial court explicitly disregarded the challenged information.

Defendant agreed to plead guilty to parental kidnapping in lower court case no. 1999-411441-FH, and third-degree criminal sexual conduct in case 2011-015354-FH, in exchange for dismissal of other charges in other cases. At the plea hearing, defendant, who turned 20 years old on September 10, 1993, admitted the following: He had sex with the victim, who was 15 years old at the time, on one occasion between September 1, 1993, and November 30, 1993, in Berrien County, Michigan, which resulted in the victim's pregnancy. After she gave birth to their son, the victim and defendant married. By December 1998, they divorced, with defendant receiving custody of their son. From December 1998 until December 2010, defendant succeeded in denying the victim the opportunity to see their son, though defendant had not made any efforts to modify or restrict the victim's right to visitation and parenting time.

Defendant challenges the inclusion of certain information in the PSIR. Among other things, according to the PSIR, the victim's family initially refused to consent to her marriage with defendant, which led to threats by defendant's family and their imposition of harsh living conditions on the victim. It further stated that defendant's brother and sister were convicted of serious crimes in an unrelated case, and that defendant had been named as a suspect in a murder investigation in Mexico. Defendant objected to the inclusion of these details in the PSIR.

At sentencing, defense counsel argued that defendant believed “he was wanted for questioning, not actually charged” in Mexico. The prosecutor asserted that there was an outstanding warrant related to the murder, but he did not bring it to sentencing because he “didn’t believe the warrant was necessary or relevant to his proceeding” Defense counsel stated that he never saw the warrant, and argued that the references to the alleged murder be struck from the PSIR. When the trial court asked for a response, the prosecutor simply stated, “[t]he People would honestly defer to the court on it, your Honor.” The trial court ruled that the murder charge and possible extradition “is not a factor and will not be considered by the court,” but it declined to order the reference struck from the PSIR. Defendant also argued that the allegations of misconduct by the defendant’s family should be removed from the PSIR. The trial court ruled that it would not consider the alleged misconduct of defendant’s family in sentencing defendant, but again declined to strike the references. The trial court did, however, grant defendant’s request to add a statement reflecting his denial of alleged additional sexual penetrations involving the victim that were listed in the PSIR.

On appeal, defendant asserts that his denial of the additional penetrations was not added to the PSIR as ordered, and argues that the trial court erred in denying his request to strike references to the alleged murder charge and his family’s bad acts. We agree. “When a court, for purposes of expediency, efficiency or otherwise, disregards information challenged as inaccurate, the court in effect determines that the information is irrelevant to sentencing. The defendant is therefore entitled to have that information stricken.” *People v Taylor*, 146 Mich App 203, 205-206; 380 NW2d 47 (1985). The trial court did not consider the challenged items in this case—the alleged murder warrant or the bad acts of defendant’s family. As a result, it should have granted defendant’s request to have the statements struck from the PSIR. See *id.*; *People v Sherman*, 489 Mich 970; 798 NW2d 776 (2011) (“The defendant challenged certain statements in the [PSIR] The sentencing judge stated on the record that he did not take the challenged information into account in sentencing, but he did not direct the probation officer to correct or delete the information from the [PSIR] as required by MCR 6.425(E)(2)(a).”); MCR 6.425(E)(2)(a).

Plaintiff’s argument on appeal that the challenged items should remain in the PSIR because the trial court found that the information was accurate, relevant, and pertinent, is unavailing. The trial court did not clearly resolve whether the challenged items were accurate, and its decision to forego consideration of the allegations at sentencing indicates that the trial court effectively treated them as irrelevant. See *Taylor*, 146 Mich App at 205-206.

Additionally, at sentencing the trial court clearly granted defendant’s request to add to the PSIR his denial of the additional sexual penetrations involving the victim, and on appeal the prosecution correctly agrees that the PSIRs should be amended to include defendant’s omitted statement. See MCR 6.425(A)(1)(h).

Remanded for the ministerial task of correcting the PSIRs. We do not retain jurisdiction.

/s/ Deborah A. Servitto
/s/ William C. Whitbeck
/s/ Douglas B. Shapiro