

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JAMES ANDERSON,

Defendant-Appellant.

UNPUBLISHED

March 4, 2014

No. 313016

Oakland Circuit Court

LC No. 2009-225616-FH

Before: HOEKSTRA, P.J., and MURRAY and RIORDAN, JJ.

PER CURIAM.

Defendant appeals his 2009 convictions of delivering/manufacturing less than 50 grams of cocaine, MCL 333.7401(2)(a)(iv), and possession of marijuana (second offense), MCL 333.7413(2). Defendant was originally sentenced to 18 months of probation, but subsequently pleaded guilty to violating his probation and was sentenced to concurrent terms of 25 months to 40 years for the cocaine conviction, and 365 days for the marijuana conviction. We affirm.

I. FACTUAL BACKGROUND

Defendant pleaded guilty in 2009 to delivering/manufacturing less than 50 grams of cocaine and possession of marijuana.¹ Defendant was sentenced to 18 months probation, and was ordered to pay a \$60 assessment for the Crime Victim Rights Fund, a \$360 supervision fee, \$150 in costs, attorney fees, and \$136 for state minimum costs. Defendant was further ordered to engage in “no assaultive or threatening behavior” nor “possess any firearm or other deadly weapon.”

However, defendant committed several probation violations. According to a probation violation report dated January 7, 2011, defendant was arrested for assaulting his son on September 20, 2010, and was arrested for assaulting two females in January 2011. Defendant also failed to pay a \$220 balance to the Oakland County Reimbursement office. He pleaded guilty to violating his probation, which was extended another six months.

¹ The factual circumstances surrounding these convictions are not relevant for this appeal.

Another probation violation report dated June 27, 2011, revealed that defendant was arrested on January 28, 2011, for carrying a concealed weapon, and subsequently pleaded guilty to felon in possession of a firearm. Defendant also persisted in his \$220 debt to the Oakland County Reimbursement office. A violation of probation hearing regarding the June 27th report was held on February 9, 2012. Defendant pleaded guilty to violating his probation, admitting that he now had a conviction for felon in possession of a firearm, and failed to pay his full court costs. He was sentenced to concurrent terms of 25 months to 40 years for the cocaine conviction, and 365 days for the marijuana conviction.

After his sentence, defendant brought a motion to correct an invalid sentence pursuant to MCR 6.445(G). Defendant claimed that he was entitled to a current presentence investigation report (PSIR), not the one prepared in 2009. After a hearing on the matter, the trial court denied defendant's motion, finding that the June 27th probation violation report met the criteria of a reasonably updated report. Defendant now appeals.

II. PRESENTENCE INVESTIGATION REPORT

A. PRESERVATION & STANDARD OF REVIEW

Defendant argues that the trial court violated his due process rights when it neglected to order the preparation of an updated PSIR before sentencing him to prison in February 2012. "To preserve an issue regarding the accuracy of the presentence investigation report for appeal, the defendant must object to the error at the time of sentencing." *People v McCrady*, 244 Mich App 27, 32; 624 NW2d 761 (2000). Consequently, we review this unpreserved issue for plain error affecting substantial rights. *Id.*

B. ANALYSIS

A trial court must use a reasonably updated presentence report for felony sentencing. *People v Triplett*, 407 Mich 510, 515; 287 NW2d 165 (1980); *People v Lyons*, 222 Mich App 319, 321; 564 NW2d 114 (1997). In the context of revoking a defendant's probation, MCR 6.445(G), provides:

If the court finds that the probationer has violated a condition of probation, or if the probationer pleads guilty to a violation, the court may continue probation, modify the conditions of probation, extend the probation period, or revoke probation and impose a sentence of incarceration. The court may not sentence the probationer to prison without having considered a current presentence report and having complied with the provisions set forth in MCR 6.425(B) and (E).

In the instant case, the trial court denied defendant's motion for resentencing based on the following grounds:

After careful review of the briefs, transcripts and applicable law, the Court now issues its Opinion and Order. The Court notes that at sentencing, Defendant did not object to being sentenced without an updated probation report. The report utilized at sentencing was approximately 7 ½ months old. However, that report

meets the criteria for a reasonably updated report because Defendant was only in the community for 26 days following preparation of the report before being sentenced to MDOC in Wayne County. Defendant was writted out of the Ryan Correctional Facility to appear for the probation violation hearing/sentencing before this Court. The Court finds that under the circumstances presented in this case, the prior report was not manifestly outdated and therefore an updated report was not required.

On appeal, defendant claims the trial court's ruling was in error. While he argues that the trial court lacked an updated PSIR after August 2009, in violation of MCR 6.445(G), his argument overlooks the supplementary probation violation reports. The probation violation report dated January 7, 2011, detailed that defendant was arrested for assaulting his son on September 20, 2010 and arrested in January 2011 for assaulting two females. The report indicated that an additional probation violation was defendant's failure to pay a \$220 balance to the Oakland County Reimbursement office. An expedited probation violation report dated June 27, 2011, listed probation violations of defendant's arrest on January 28, 2011, his carrying a concealed weapon, his guilty plea to felon in possession of a firearm, and his continual \$220 outstanding debt to the Oakland County Reimbursement office.

These probation reports further communicated that defendant's "adjustment to community living" was poor in light of his assaultive behavior and multiple arrests. The June 2011 report recommended that the trial court imprison defendant for a period of 25 months to 40 years for his cocaine conviction and 365 days for his marijuana conviction. The probation agent reiterated these recommendations at the February 2012 hearing, which the trial court ultimately adopted.

As the trial court correctly found, the June 2011 "report meets the criteria for a reasonably updated report because Defendant was only in the community" for approximately a month "following preparation of the report before being sentenced to [the Michigan Department of Corrections] in Wayne County." This report comports with MCR 6.445(G). Further, defendant has not even alleged that there is faulty or missing information that resulted in an invalid sentence. See, e.g., *People v Waclawski*, 286 Mich App 634, 690; 780 NW2d 321 (2009) (at sentencing hearings "the defendant must be afforded an adequate opportunity to rebut any matter he or she believes to be inaccurate.").

Defendant has failed to demonstrate any plain error affecting his substantial rights. *McCrary*, 244 Mich App at 32.

III. CONCLUSION

Because defendant has not demonstrated error requiring reversal, resentencing is not warranted. We affirm.

/s/ Joel P. Hoekstra
/s/ Christopher M. Murray
/s/ Michael J. Riordan