

IN THE UTAH COURT OF APPEALS

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State of Utah,)	MEMORANDUM DECISION
)	(Not For Official Publication)
Plaintiff and Appellee,)	
)	Case No. 20060482-CA
v.)	
)	F I L E D
Michael S. Weaver,)	(June 28, 2007)
)	
Defendant and Appellant.)	2007 UT App 229

Second District, Farmington Department, 051700456
The Honorable Rodney S. Page

Attorneys: Scott L. Wiggins, Salt Lake City, for Appellant
Mark L. Shurtleff and Karen A. Klucznik, Salt Lake
City, for Appellee

Before Judges Bench, Orme, and Thorne.

PER CURIAM:

Michael S. Weaver appeals his sentence for theft, a third degree felony. Weaver argues that the district court erred by failing to resolve alleged inaccuracies in the presentence investigation report. He also argues that his trial counsel was ineffective for failing to ensure that the district court resolved the alleged inaccuracies in the presentence investigation report.

Weaver argues that the district court erred in failing to resolve alleged inaccuracies in the presentence investigation report. The State concedes that the district court failed to comply with Utah Code section 77-18-1(6)(a) by not resolving the alleged inaccuracies on the record. See Utah Code Ann. § 77-18-1(6)(a) (Supp. 2006). However, the State argues that Weaver was not prejudiced by this mistake during sentencing, or alternatively, that the issue is moot because Weaver has already served his jail term. Accordingly, it requests this court to affirm Weaver's sentence and remand solely to comply with section 77-18-1(6)(a).

In State v. Maroney, 2004 UT App 206, 94 P.3d 295, we held that the district court erred in failing to resolve Maroney's

objections to the sentencing reports, and we remanded to allow the court to resolve the objections on the record. See id. at ¶31. We went on to state that "[i]f resolution of the objections affects the trial court's view of the appropriate sentence, the trial court may then revise the sentence accordingly." Id. This disposition is appropriate in the present case because Weaver alleges that he was prejudiced by the district court's failure to resolve the alleged inaccuracies in the report. Allowing the district court to revisit the sentences after resolving the alleged inaccuracies in the presentence investigation report gives appropriate deference to the district court's sentencing function. Accordingly, we remand, but reject the State's request that we affirm the sentences prior to remand.¹

Based upon our review of the record and the State's concession, we remand the case so "the sentencing judge can consider the objections to the presentence report, make findings on the record as to whether the information objected to is accurate, and determine on the record whether that information is relevant to sentencing." State v. Jaeger, 1999 UT 1, ¶44, 973 P.2d 404. After resolving the alleged inaccuracies in the presentence investigation report, the district court may revise the sentence as it deems appropriate. Our disposition makes it unnecessary to consider Weaver's alternative argument alleging ineffective assistance of trial counsel.

This matter is remanded to the district court.

Russell W. Bench,
Presiding Judge

Gregory K. Orme, Judge

¹While the State's arguments that Weaver was not prejudiced by any alleged error and that the issue is now moot are plausible, the record is not sufficiently clear to allow us to make those determinations. More particularly, we do not know the exact nature of the alleged inaccuracies with the presentence investigation report. Further, while Weaver speaks mainly to the jail term associated with his probation, it is possible that resolution of the inaccuracies in his presentence investigation report could have led to different, and more favorable, probationary terms.

William A. Thorne Jr., Judge