STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JEFFREY ALLEN HART,

Defendant-Appellant.

UNPUBLISHED
May 7, 1996

No. 180550
LC No. 94-007089-FC

Before: MacKenzie, P.J., and Saad and C. F. Youngblood,* JJ.

PER CURIAM.

Defendant pleaded guilty to breaking and entering a building, MCL 750.110; MSA 28.305. In exchange for the plea, the prosecution agreed to dismiss a charge of breaking and entering a dwelling, MCL 750.110; MSA 28.305,[1] and a fourth habitual felony offender charge, MCL 769.12; MSA 28.1084. Defendant was sentenced to five to ten years in prison, and now appeals of right. We affirm the sentence and remand for the limited purpose of amending the Pre-Sentence Investigation Report (PSIR).

I.

Defendant first asserts that he is entitled to have his PSI amended in certain respects. He argues that the "criminal history" section incorrectly states that "on September 14, 1985, he absconded from the RAP House rehabilitation center without authorization." Defendant's appellate brief (submitted by appointed counsel) correctly states that he raised this alleged inaccuracy at sentencing. However, defendant's brief does not mention that on May 24, 1995, defendant (apparently without the benefit of counsel) wrote a letter to the sentencing judge asking for the same relief. The lower court record contains a responsive letter from the sentencing judge, stating as follows:

> . . . Your request is for a correction on the presentence report wherein at page 6 it is stated or inferred that you absconded from the RAP House treatment program. In fact,

*Circuit judge, sitting on the Court of Appeals by assignment.

> we did discuss that at the time of sentence and, as a result, the presentence report was corrected at page 6 to reflect you remained on absconder status from parole supervision until December 17, 1985.
>
> It is my understanding that you did abscond while on parole but this was subsequent to you leaving the RAP House program, and that is verified in the sentencing transcript, pages 8 through 10.
>
> Therefore, by copy of this letter I am requesting that Mr. Sodman correct the presentence report, page 7, second paragraph from the bottom [sic, should be page 6, first full paragraph], to read as follows: "Just nine days later, the defendant left that program without staff permission. Subsequently, and while still on parole, the defendant absconded from parole supervision and remained an absconder until 12/17/85." The rest of that paragraph and PSI are correct and remain unchanged.

We note that none of the multiple copies of the PSI which were provided to this Court contain the sentencing judge's requested amendment. Accordingly, we remand so that the judge's change may be implemented (if the change has not been made), and with directions that a copy of the amended PSI be transmitted to the Department of Corrections.

In his appellate brief, defendant's counsel also argues that the offense statements in both the Sentencing Information Report ("SIR") and the Basic Information Report ("BIR") contain incorrect statutory citations. However, this issue lacks merit, because the statute *in effect on the date of the offense and at sentencing* (which addressed both the offense of breaking and entering an *occupied dwelling*, and the offense of breaking and entering a *building)*, was MCL 750.110; MSA 28.305. The "A" and "B" designations were used simply to differentiate which portion of the statute was being relied upon: entry of a building ("A"), or entry of a dwelling ("B"). There is therefore no error in the SIR or the BIR.

II.

Defendant next argues that his sentence of five to ten years, an upward departure from the guidelines' recommendation of one and a half to three and a half years, violates the principle of proportionality under *People v Milbourn*, 435 Mich 630; 461 NW2d 1 (1990). It is well-established that departures from the guidelines range are appropriate only where the guidelines do not adequately account for important factors legitimately considered at sentencing, or where, in the judgment of the trial judge, the recommended range is disproportionate to the seriousness of the crime. *Milbourn*, 435 Mich at 656-657; 461 NW2d 1.

Milbourn did not address the unique sentencing situation which can be presented when a defendant pleads guilty, particularly when the plea (1) is in exchange for the dismissal of other charges or (2) is of a lesser offense. *People v Duprey*, 186 Mich App 313, 318; 463 NW2d 240 (1990). Such pleas "will inevitably present the judge with important factors that may not be adequately embodied in the guidelines variables." *Id.* Furthermore, where a defendant has substantially more

convictions than the guidelines score, an upward departure may be proportionate. *Milbourn*, 435 Mich at 657; 461 NW2d 1.

In this case, defendant broke into the home of an acquaintance, and stole coins. He was still in the home when the acquaintance returned. Defendant, who was thirty-two years old at sentencing, pleaded guilty in exchange for dropping the more serious charges of breaking and entering a dwelling, and fourth habitual felony. As the sentencing judge noted, defendant had four prior felony convictions and fourteen prior misdemeanor convictions. By his own admission, defendant has had, since the age of thirteen, a serious substance abuse problem which he has been unsuccessful in resolving. Following careful review of the record, we find the sentence imposed to be proportionate to the seriousness of this offender and this offense

Defendant's sentence is affirmed, and this case is remanded with directions to amend the PSI and to transmit a copy of it to the Department of Corrections, consistent with this opinion. We do not retain jurisdiction.

/s/ Barbara B. MacKenzie
/s/ Henry William Saad
/s/ Carole F. Youngblood

[1] Defendant pleaded guilty on July 11, 1994, before the amendments to MCL 750.110; MSA 28.305 and following sections, became effective on October 1, 1994.