

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

COREY CROOM,

Defendant-Appellant.

UNPUBLISHED

May 17, 1996

No. 186202

LC No. 94-051397-FC

Before: Kavanagh, T.G.,* P.J., and R.B. Burns** and G.S. Allen,** JJ.

PER CURIAM.

Defendant pleaded guilty of second-degree murder, MCL 750.317; MSA 28.549, and was sentenced to twenty-five to fifty years' imprisonment. He appeals as of right. We remand for resentencing. This case has been decided without oral argument pursuant to MCR 7.214(E)(1)(b).

The trial court erred in failing to respond to defendant's objections to inaccuracies in the presentence investigation report concerning his prior misdemeanor conviction for frequenting a drug house. The trial court never decided if that information was accurate or if it would simply ignore the challenged information, MCR 6.425(D)(3). *People v Newcomb*, 190 Mich App 424, 427; 476 NW2d 749 (1991). Because the information might have been considered by the court in its sentencing decision, we remand for resentencing. *People v Hoyt*, 185 Mich App 531, 536; 462 NW2d 793 (1990).

Defendant also challenged the factual accuracy of another statement about this offense in the presentence investigation report, which the trial court agreed to correct. It appears that the report has

*Former Supreme Court Justice, sitting on the Court of Appeals by assignment pursuant to Administrative Order 1995-1.

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recently been corrected by the trial court to reflect its ruling on this objection. However, if the report has not yet been corrected and a corrected copy of the report has not yet

been sent to the Department of Corrections, the trial court is directed to make the corrections after defendant's counsel is permitted to review the corrected report. *People v Britt*, 202 Mich App 714, 718; 509 NW2d 914 (1993); MCR 6.425(D)(3).

Defendant also challenges information about his prior misdemeanor conviction in the trial court's scoring of Prior Record Variable 6 at five points. Because the parties and the court were unsure about defendant's status with the district court on that conviction at the time he committed the instant offense, the trial court should have adjourned these proceedings so that the prosecution could prepare a proper response to defendant's challenge to the accuracy of the facts for the court's scoring of this variable. On remand, the prosecution should produce copies of the records from the district court proceedings or whatever evidence would help the trial court decide on the proper scoring of PRV 6. *People v James Johnson*, 203 Mich App 579, 585-586; 513 NW2d 824 (1994); MCL 771.14(5); MSA 28.1114(5).

Because the prosecution should produce the records of defendant's prior misdemeanor conviction to justify the court's scoring of PRV 6, or investigate the facts regarding that conviction upon remand, the trial court should also address defendant's claim that he was not represented by counsel in that matter and did not validly waive his right to counsel at the same time. The trial court erred in not addressing the merits of this issue at the original sentencing hearing, but the court still considered this prior conviction for scoring PRV 6.¹ *People v Carpentier*, 446 Mich 19, 31, 35; 521 NW2d 195 (1994); *People v Alexander (After Remand)*, 207 Mich App 227, 230; 523 NW2d 653 (1994).

The trial court also erred in its scoring of PRV 6 at five points on the facts it had before it at the original sentencing hearing. There was no evidence that defendant was on bond, bail, pretrial diversion or Holmes Youthful Trainee status when he committed this offense. Michigan Sentencing Guidelines (2d ed, 1988), p 75. The trial court should score this variable only if there is evidence that defendant had a post-conviction relationship or other relationship to the criminal justice system at the time he committed the instant offense, as defined in the guidelines.

The trial court's scoring of Offense Variable 3, however, was not an abuse of discretion. *People v Daniels*, 192 Mich App 658, 674; 482 NW2d 176 (1992). There was evidence in the record, in addition to defendant's admissions at the plea hearing, to support the trial court's scoring of OV 3. *People v Hernandez*, 443 Mich 1, 16; 503 NW2d 629 (1993); *People v LeMarbe (After Remand)*, 201 Mich App 45, 48-49; 505 NW2d 879 (1993).

We need not decide at this time whether defendant's sentence violates the principle of proportionality under *People v Milbourn*, 435 Mich 630; 461 NW2d 1 (1990).

Remanded for resentencing in accordance with this opinion. We do not retain jurisdiction.

/s/ Thomas G. Kavanagh

/s/ Robert B. Burns

/s/ Glenn S. Allen, Jr.

¹ We note that the prosecution has produced a copy of the judgment of sentence from the district court case for the first time on appeal that states that defendant knowingly, intelligently and voluntarily waived his right to counsel in the district court matter. The statement in the judgment of sentence, however, does not conclusively resolve the issue. Because the trial court should reconsider its sentencing decision on other grounds and defendant made a prima facie showing at the sentencing hearing, we believe that the trial court should revisit this issue after both parties have been given the opportunity to develop a proper record.