

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JOSEPH LAWRENCE GOKEY,

Defendant-Appellant.

UNPUBLISHED

May 24, 1996

No. 183093

LC Nos. 94-001243-FH;

94-001244-FH

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

MEMORANDUM.

Defendant pleaded guilty of assault with a dangerous weapon, MCL 750.82; MSA 28.277, and malicious destruction of police property, MCL 750.377b; MSA 28.609(2). He was sentenced to concurrent terms of thirty-two to forty-eight months' imprisonment, and now appeals as of right. We affirm. This case has been decided without oral argument pursuant to MCR 7.214(E)(1)(b).

The trial court properly relied upon a supplemental presentence investigation report to provide updated information on defendant at sentencing. The preparation of a new presentence investigation report was not required. *People v Martinez (Aft Rem)*, 210 Mich App 199, 202; 532 NW2d 863 (1995), lv pending. There is no support in the record for defendant's claim that he was denied the opportunity to review the presentence investigation report before sentencing. *People v Hernandez*, 443 Mich 1, 13; 503 NW2d 629 (1993); MCR 6.425(B). The forensic report which defendant did not review with his attorney was not a part of the presentence investigation report. The trial court also was not required to respond to defendant's objection at sentencing under MCR 6.425(D)(2)(b). *People v Newcomb*, 190 Mich App 424, 427; 476 NW2d 749 (1991). The record shows that

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

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defendant was disagreeing with the trial court's interpretation of the facts as the court explained its sentencing decision. Defendant did not make a proper challenge to the accuracy of facts contained in the presentence investigation report that required a response from the trial court.

Defendant failed to object to the accuracy of the presentence investigation report regarding his education level. Because an objection was not made below, this issue is waived on appeal. *People v Sharp*, 192 Mich App 501, 504-505; 481 NW2d 773 (1992). We can discern no error regarding the trial court's consideration of defendant's written version of this offense. Nothing in the record suggests that this was an inaccurate account. The trial court was also well aware, through other information in the supplemental presentence report, that defendant was trying to improve his language skills. The trial court did not err in not separately asking defendant if the presentence investigation report was accurate when the court rules did not require the trial court to so inquire. See *People v James Johnson*, 203 Mich App 579, 586; 513 NW2d 824 (1994). The trial court also did not err in failing to inquire if defendant waived his right against self-incrimination at his competency evaluation when the court did not rely upon that report in its sentencing decision.

The trial court satisfied the articulation requirement of *People v Coles*, 417 Mich 523, 549; 339 NW2d 440 (1983), in its sentencing decision. The trial court was not required to consider only those factors listed in *Coles* in explaining its sentencing decision. *People v Dwight Johnson*, 173 Mich App 706, 709; 434 NW2d 218 (1988). However, a review of the trial court's decision reveals that the court took into account the need to protect society and defendant's potential for rehabilitation. There also were sufficient facts contained in the presentence investigation report to support the trial court's findings that defendant has an alcohol addiction and becomes violent when drinking.

Defendant's sentences do not violate the principle of proportionality. *People v Milbourn*, 435 Mich 630, 636; 461 NW2d 1 (1990). While the trial court exceeded the sentencing guidelines, it provided sufficient reasons as to why the guidelines were inadequate. *People v Stone*, 195 Mich App 600, 608; 491 NW2d 628 (1992). The guidelines did not reflect the severity of this offense and defendant's pattern of committing similar offenses. Moreover, the guidelines (scored for the assault offense) did not reflect the charges that were dismissed by the plea agreement and the separate charge of malicious destruction of police property. *People v Duprey*, 186 Mich App 313, 318; 463 NW2d 240 (1990).

Affirmed.

/s/ Thomas G. Kavanagh

/s/ Robert B. Burns

/s/ Glenn S. Allen, Jr.