

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

TIMOTHY EDWARD SPECK,

Defendant-Appellant.

UNPUBLISHED

October 1, 1996

No. 187955

LC No. 95-003513-FH

Before: J.H. Gillis, P.J., and G.S. Allen and J.B. Sullivan, JJ.*

MEMORANDUM.

Defendant pleaded nolo contendere to unlawfully driving away an automobile, MCL 750.413; MSA 28.645, and was sentenced to forty to sixty months' imprisonment to be served consecutively to a sentence for which he was on parole. Defendant appeals as of right. We affirm defendant's conviction and sentence but order the clerical correction of the sentencing information report upon return of the lower court record. This case has been decided without oral argument pursuant to MCR 7.214(A).

Defendant challenges the scoring of Offense Variables 14, 17 and 25. With regard to OV 25, defendant correctly notes that the trial court agreed to score that variable at zero points, thereby lowering the guidelines' range to twelve to forty months. This change was not made on the sentencing information report and so, upon return of the lower court record, we direct the trial court to make the clerical correction of that report. Defendant has waived his challenge to OV 14 and OV 17 by failing to raise them before the trial court or in a motion to remand. *People v Eaves*, 203 Mich App 356, 358; 512 NW2d 1 (1994).

Defendant next challenges information in the presentence investigation report. The trial court err in finding, after questioning the probation officer, that the officer was credible and did not abuse its discretion in refusing to strike the paragraph. *People v Newcomb*, 190 Mich App 424; 476 NW2d

*Former Court of Appeals judges, sitting on the Court of Appeals by assignment pursuant to Administrative Order 1996-3.

749 (1991); *People v Brooks*, 169 Mich App 360; 425 NW2d 555 (1988). Defendant has cited to no case law which would support striking the paragraph because it is prejudicial to him.

Considering defendant's lengthy criminal history and the numerous charges dismissed as a result of the plea agreement, his sentence does not violate the principle of proportionality. *People v Milbourn*, 435 Mich 630; 461 NW2d 1 (1990). Defendant has failed to rebut the presumptive proportionality of his sentence, which was within the recommended guidelines' range. *People v Broden*, 428 Mich App 343; 408 NW2d 789 (1987).

Defendant's conviction and sentence are affirmed but, upon return of the lower court record, the trial court shall make the clerical correction of the sentencing information report to reflect that OV 25 is scored as zero points.

/s/ John H. Gillis

/s/ Glenn S. Allen, Jr.

/s/ Joseph B. Sullivan