

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

RUDY JAMES FOSTER,

Defendant-Appellant.

UNPUBLISHED
October 18, 1996

No. 185269
LC No. 95-051715-FH

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

MEMORANDUM.

Defendant pleaded guilty of receiving or concealing stolen property over \$100, MCL 750.535; MSA 28.803, and was sentenced to thirty-five to sixty months' imprisonment. He appeals as of right. We affirm defendant's conviction and sentence, but remand to the trial court to correct the presentence investigation report (PSIR). This case has been decided without oral argument pursuant to MCR 7.214(E)(1)(b).

The trial court erred in its response to defendant's objection to the accuracy of the PSIR at the time of sentencing. Defendant objected to a portion of the report which included allegations that he convinced teenagers to commit breakings and enterings for him and also threatened the teenagers. While the trial court properly ruled it would disregard this information at sentencing, it failed to strike the challenged information from the PSIR. Defendant is entitled to have the information stricken from the report and to have a copy of the corrected report sent to the Department of Corrections after defense counsel has had the opportunity to review it. *People v Britt*, 202 Mich App 714, 718; 509 NW2d 914 (1993); MCR 6.425(D)(3). The fourth paragraph from the top of page 1 of the report should be deleted on remand of the matter to the trial court.

Defendant also contends that information about his family's arrest records should not have been included in the PSIR. Because defendant failed to raise this objection at the time of sentencing, the

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

argument is waived on appeal. *People v Sharp*, 192 Mich App 501, 504-505; 481 NW2d 773 (1992).

The trial court did not abuse its discretion in the scoring of Offense Variables 8, 9 and 17 because there is evidence to support the scores. *People v Hernandez*, 443 Mich 1, 16; 503 NW2d 629 (1993); *People v Daniels*, 192 Mich App 658, 674; 482 NW2d 882 (1992).

In light of defendant's prior record, his limited employment history and the amount of stolen property found in his possession, the trial court properly concluded that defendant derived a substantial portion of his income from criminal activities to score Offense Variable 8 at ten points. *People v Ayers*, 213 Mich App 708, 724-725; 540 NW2d 791 (1995), lv pending.

Although in defendant's version of the offense, it was his wife who purchased the stolen property, there was other evidence that supported a finding that defendant was the leader in this crime to score Offense Variable 9 at ten points. *People v James Johnson*, 202 Mich App 281, 289; 508 NW2d 509 (1993).

Finally, there was uncontroverted evidence in the PSIR to place the value of property acquired by defendant in this offense and other uncharged crimes at over \$5,000. *People v Randolph Warner*, 190 Mich App 26, 28-29; 475 NW2d 397 (1991). Therefore, the court properly scored Offense Variable 17 at ten points.

Affirmed as to defendant's conviction and sentence, but the case is remanded to the trial court to strike from the PSIR the information regarding defendant's alleged recruitment and threatening of teenagers. A new copy of the report shall be sent to the Department of Corrections.

/s/ John H. Gillis

/s/ Glenn S. Allen, Jr.

/s/ Joseph B. Sullivan