STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JACK MAURICE HILLS, III,

Defendant-Appellant.

UNPUBLISHED
October 29, 1996

No. 182176
LC No. 93-126592-FH

Before: Holbrook, Jr., P.J., and Saad and W.J. Giovan,* JJ.

PER CURIAM.

Defendant pleaded nolo contendere to one count of operating a motor vehicle while under the influence of intoxicating liquor, causing the death of Gary Richardville, MCL 257.625(4); MSA 9.2325(4). Defendant was sentenced to serve a prison term of five to fifteen years. He appeals as of right, raising certain issues related to his sentence. We affirm.

Defendant first argues that it was improper to assess fifteen points on PRV-6, prior relationship to the criminal justice system, for a prior misdemeanor conviction. We find no error.

The sentencing guidelines do not apply to the offense for which defendant was convicted. Here, the probation department scored the guidelines for manslaughter only as a guide for the sentencing panel and the trial court in developing a proportionate sentence. On appeal, the prosecutor concedes that the proper score for PRV-6 was five, not fifteen, points. A score of five points appears correct, based on unchallenged information in the presentence investigative report that, at the time of the current offense, defendant had been released on bond for assault and battery—an offense that is related to an enumerated crime group set forth in the guidelines' definition of misdemeanor.[1] Because a score of five points would still place defendant at prior record level B, any scoring error was harmless, *People v Ratkov (After Remand)*, 201 Mich App 123, 127; 505 NW2d 886 (1993), and therefore defendant is not entitled to a remand for resentencing.

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

Defendant next challenges the fact that during the county sentencing panel's deliberative process his attorney was not allowed to be present and he was not otherwise allowed to challenge the information that the panel relied on in making its recommendation. We find no merit to these claims.

A criminal defendant is entitled to the assistance of counsel at any critical stage of the proceedings where substantial rights may be affected. US Const, Ams VI, XIV; *People v Johnson*, 386 Mich 305, 316-317; 192 NW2d 482 (1971). While the presence of counsel at sentencing is critical in order to correct any inaccuracies and to explain information in the presentence report, *People v Smith*, 423 Mich 427, 452-453; 378 NW2d 384 (1985) (Opinion of Williams, C.J.), preparation of the report is not considered a critical or adversarial stage of the proceeding requiring defense counsel's presence, *People v Daniels*, 149 Mich App 602, 606-607; 386 NW2d 609 (1986). Rather, preparation of the report is considered part of the diagnostic and rehabilitative process. See *People v Shively*, 45 Mich App 658, 664-665; 206 NW2d 808 (1973).

Defendant was entitled to notice of the sentencing panel's ultimate recommendation and to access to the same information provided to the trial court as part of that recommendation. See *People v Mills*, 145 Mich App 126, 129-131; 377 NW2d 361 (1985). Although it appears that the panel's recommendation was not provided to counsel before the first scheduled hearing, the court allowed counsel an opportunity to explore the factual basis for the panel's recommendation with the author of the report. There is nothing in the record to suggest that counsel did not take advantage of this opportunity for an informal discussion. More important, however, defendant and his counsel were provided an adequate opportunity to challenge the accuracy of this information at the sentencing hearing before the trial court. Accordingly, we conclude that defendant's Sixth Amendment right to counsel and his right to due process of law were not violated by counsel's absence from either defendant's presentence interview or from the sentencing panel's deliberative process.

Defendant lastly argues that MCL 771.14(2)(e)(iv); MSA 28.1144(2)(e)(iv), which requires a probation officer to include a recommended sentence in a presentence report, is unconstitutional because it lacks adequate standards or safeguards for the making of such recommendations. We decline to address the merits of this issue because, as defendant concedes, the cited statutory amendment has no application to this case.

Affirmed.

/s/ Donald E. Holbrook, Jr.
/s/ Henry W. Saad
/s/ William J. Giovan

[1] According to the updated PSIR, the charge of assault and battery was reduced to "jostling" (i.e., being a disorderly person in a public place), also a misdemeanor offense. Defendant eventually pleaded guilty to the reduced charge and paid a fine.