

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

CRAIG JUNIOR YOUNG,

Defendant-Appellant.

UNPUBLISHED
February 25, 1997

No. 182913
Saginaw Circuit
LC No. 93-008406-FC

Before: D.F. Walsh,* P.J., and R.P. Griffin** and W.P. Cynar,* JJ.

MEMORANDUM.

Defendant pleaded nolo contendere to assault with intent to murder, MCL 750.83; MSA 28.278, carrying a dangerous weapon with unlawful intent, MCL 750.226; MSA 28.423, and possession of a firearm during the commission of a felony, MCL 750.227b; MSA 28.424(2). For those respective convictions, he was sentenced to twelve to twenty years' imprisonment, three to five years' imprisonment, and two years' consecutive imprisonment. He appeals as of right. We affirm. This case has been decided without oral argument pursuant to MCR 7.214(A).

As to defendant's first issue, we hold that the trial court complied with its duty under MCR 6.425(D)(2)(b) to give each party an opportunity to explain, or challenge the accuracy or relevancy of, any information in the presentence report. Defendant did not preserve a challenge to the accuracy of the information in the investigator's description of the offense. *People v Sharp*, 192 Mich App 501, 504; 481 NW2d 773 (1992). The question of whether defense counsel provided ineffective assistance on this matter is not properly before us because it has not been briefed and, in any event, there is no record support for a finding of either deficient performance or prejudice. See *People v Pickens*, 446 Mich 298, 338; 521 NW2d 797 (1994); *People v Yarger*, 193 Mich App 532, 540 n 3; 485 NW2d

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119 (1992); *In re Toler*, 193 Mich App 474, 477; 484 NW2d 672 (1992); *People v Armendarez*, 188 Mich App 61, 74; 468 NW2d 893 (1991). Further, defendant was not denied his right of allocution because the record shows that the trial court gave him an opportunity to address the court on any matter after defense counsel addressed the court and that he, in fact, exercised this right. MCR 6.425(D)(2)(c); *People v Westbrook*, 188 Mich App 615; 470 NW2d 495 (1991).

Next, defendant has not preserved a challenge to the scoring of the prior record variables of the sentencing information report prepared for the assault with intent to murder conviction because this issue was not presented to the trial court. MCR 6.429(C). In any event, the information in the presentence report on defendant's convictions and sentences for two prior misdemeanor offenses and on defendant's concurrent conviction in this case of carrying a dangerous weapon with unlawful intent support the scores for the prior record variables. *People v Hernandez*, 443 Mich 1; 503 NW2d 629 (1993).

Defendant's sentence of twelve to twenty years' imprisonment for the assault with intent to murder conviction is proportionate. *People v Milbourn*, 435 Mich 630; 461 NW2d 1 (1990); *People v Dukes*, 189 Mich App 262, 266; 471 NW2d 651 (1991); *People v Marshall Warner*, 190 Mich App 734; 476 NW2d 660 (1991). We do not address whether the trial court erred in imposing the sentence of three to five years' imprisonment for the carrying a dangerous weapon conviction. Any error related to that sentence would not entitle defendant to relief in view of our affirmance of the lengthier sentence. *Sharp, supra*, p 506.

Affirmed.

/s/ Daniel F. Walsh
/s/ Robert P. Griffin
/s/ Walter P. Cynar