

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

BRADLEY ALAN CARTO,

Defendant-Appellee.

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UNPUBLISHED  
February 28, 1997

No. 185327  
Genesee Circuit  
LC No. 95-051592-FH

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

MEMORANDUM.

Pursuant to a plea agreement, defendant pleaded guilty to fourth-degree criminal sexual conduct, MCL 750.520(e)(1)(a); MSA 28.788(5)(1)(a), and was sentenced to five years' probation, with the first year to be served in jail. Defendant appeals as of right. We remand. This case has been decided without oral argument pursuant to MCR 7.214(A).

The trial court erred by failing to address or resolve defendant's challenges to the information contained in the presentence investigation report (PSIR). We therefore remand the case to the trial court with directions to address the challenges in accordance with MCL 771.14(5); MSA 28.1144(5), MCR 6.425(D)(3), and *People v Newcomb*, 190 Mich App 424, 427; 476 NW2d 749 (1991). The record shows that defendant challenged the information in the PSIR which was used as the basis for scoring Offense Variables 5 and 12 of the sentencing guidelines, and the trial court never properly resolved that challenge. Once the contents of the PSIR are resolved, the offense variables should be reconsidered and scored accordingly. Aside from the court's failure to address defendant's challenge to the PSIR and its reliance on the challenged information in scoring the sentencing guidelines, there is no indication that the court abused its discretion in imposing defendant's probationary sentence. *People v*

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\*Former Court of Appeals judges, sitting on the Court of Appeals by assignment pursuant to Administrative Order 1996-10.

\*\*Former Supreme Court justice, sitting on the Court of Appeals by assignment pursuant to Administrative Order 1996-10.

*Milbourn*, 435 Mich 630, 636; 461 NW2d 1 (1990). Defendant is therefore not entitled to resentencing unless the trial court finds that the offense variables were misscored and that the correctly scored guidelines would result in a different sentence.

Defendant has not shown that his trial counsel's performance at sentencing deprived him of the effective assistance of counsel. *Strickland v Washington*, 466 US 668; 104 S Ct 2052; 80 L Ed 2d 674 (1984); *People v Pickens*, 446 Mich 298, 326; 521 NW2d 797 (1994).

Defendant's claim for additional sentence credit is moot because the record indicates that he has already served his entire jail term. See *People v Greenberg*, 176 Mich App 296, 302; 439 NW2d 336 (1989).

Finally defendant's claim that he was not allowed sufficient time to review a letter from the victim's family prior to sentencing has not been preserved for appellate review. Defendant never objected below to having insufficient time to respond to the letter. On appeal, defendant's appellate counsel does not raise any additional objections which should have been raised to the letter.

Remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Daniel F. Walsh

/s/ Robert P. Griffin

/s/ Walter P. Cynar