

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

KOYAN SANDERS,

Defendant-Appellant.

UNPUBLISHED
February 28, 1997

No. 187800
Recorder's Court
LC No. 91-009314-FC

Before: Fitzgerald, P.J., and Griffin and M.R. Knoblock,* JJ.

MEMORANDUM.

Defendant pleaded guilty to second-degree murder, MCL 750.317; MSA 28.549, 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 life imprisonment and two years' consecutive imprisonment. He appeals as of right. We affirm defendant's convictions and sentences but remand for correction of the presentence investigation report (PSIR). This case has been decided without oral argument pursuant to MCR 7.214(A).

Defendant first argues that the sentencing court abused its discretion in failing to resolve his challenge to the accuracy of the PSIR. We agree but find that, because the trial court did not rely on the challenged information, the error does not entitle defendant to resentencing. MCL 771.14(5); MSA 28.1144(5); *People v Martinez (After Remand)*, 210 Mich App 199, 202; 532 NW2d 863 (1995). However, we remand with instructions that the reference to a sexual misconduct infraction be stricken and that a corrected report be transmitted to the Department of Corrections. *Martinez, supra*, 210 Mich App at 202-203. We stress that defendant is not entitled to resentencing on this issue.

Defendant next argues that the trial court abused its discretion in assessing him ten points under Prior Record Variable 3 for a juvenile charge which did not result in an adjudication of guilt. We agree. However, the error is harmless because defendant's life sentence would be within the guidelines' range

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

at either level C-IV or B-IV. *People v Ratkov (On Remand)*, 201 Mich App 123, 127; 505 NW2d 886 (1993).

Next, defendant argues that the trial court abused its discretion in assessing him fifty points for Offense Variable 3, premeditated intent to kill, even though defendant pled guilty to second-degree murder. We disagree. The trial court may rely on any record evidence to support its scoring of the guidelines. *Ratkov (On Remand)*, *supra*, 201 Mich App at 125. Because there was evidence on the record to support the trial court's scoring decision, it may not be set aside. *People v Hernandez*, 443 Mich 1, 16-17; 503 NW2d 629 (1993).

Lastly, defendant argues that he is entitled to resentencing because his sentence is disproportionate. Defendant has waived any challenge to the proportionality of his sentence by agreeing to be sentenced within the recommended guidelines' range. *People v Blount*, 197 Mich App 174, 175-176; 494 NW2d 829 (1992).

Defendant's convictions and sentences are affirmed, but the case is remanded for correction of the PSIR. We do not retain jurisdiction.

/s/ E. Thomas Fitzgerald
/s/ Richard Allen Griffin
/s/ M. Richard Knoblock