

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

TOBY MONTY REYNOLDS,

Defendant-Appellant.

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UNPUBLISHED

March 4, 1997

No. 189799

Genesee Circuit Court

LC No. 93-48650-FH

Before: Taylor, P.J., and McDonald and C. J. Sindt\*, JJ.

PER CURIAM.

Pursuant to a plea agreement defendant pleaded guilty to attempted carrying a concealed weapon, MCL 750.227, 750.92; MSA 28.424, 28.287, and was sentenced to 20 to 30 months' imprisonment with 248 days credit toward time served. On appeal defendant claims his sentence was based upon inaccurate information and his sentence was disproportionate..

The defendant's claim that his sentence was based upon inaccurate information is without merit. At defendant's first sentencing on January 10, 1995, where he was given a delayed sentence he stated he went over the presentence investigation report with his attorney and he had no additions or corrections. After failing to abide by the terms of the delayed sentence defendant was again sentenced on September 27, 1995. After his attorney started to list proposed corrections to his presentence report defendant insisted on receiving a copy of the report so he could further review the report. The court furnished a copy of the report to the defendant and recessed the sentencing hearing. The defendant appeared before the court several hours later and again indicated he had read the report. The only objections the defendant raised to the report were an incorrect computation of jail credits and his need to further explain the reasons why he failed to complete the Odyssey program. Since the defendant failed to raise any other inaccuracies in the report at sentencing we will not consider such claims on appeal. *People v Sharp*, 192 Mich App 501; 481 NW2d 773 (1992). *People v Lawrence*, 206 Mich App 378; 522 NW2d 654 (1994). Moreover, we will not consider on appeal defendant's claim of ineffective assistance of counsel for his failure to raise his claimed inaccuracies in the presentence report when he affirmatively conceded the report was accurate with the exceptions

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

noted above. The court accepted defendant's computation of jail credit days and defendant's explanation of the reasons he failed the Odyssey program needed no response by the court.

We further find the court's sentence was not an abuse of discretion because it was proportionate to the offense and the history of the defendant. *People v Milbourn*, 435 Mich 630; 461 NW2d 1 (1990). The court's reasons for the upward departure from the sentencing guidelines were based on the record and reflected defendant's failure to succeed in community placement and his need for more structured mental and drug treatment.

Defendant's remaining claims for corrections to his presentence report and resentencing before a different judge are moot in light of our resolution of his other issues.

Affirmed.

/s/ Clifford W. Taylor  
/s/ Gary R. McDonald  
/s/ Conrad J. Sindt