

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JECOLBY THOMAS WILLIAMS, a/k/a
JECOBIE WILLIAMS,

Defendant-Appellant.

UNPUBLISHED

March 7, 1997

No. 178082

Washtenaw Circuit

LC No. 94-002360 FC

Before: Michael J. Kelly, P.J., and Smolenski and W.J. Giovan,* JJ.

MEMORANDUM.

Defendant pleaded guilty to second-degree criminal sexual conduct, MCL 750.520c(1)(d); MSA 28.788(3)(1)(d), and was sentenced to five to fifteen years' imprisonment. He appeals as of right. We affirm. This case has been decided without oral argument pursuant to MCR 7.214(A).

Defendant first claims that the sentencing court violated the terms of the plea agreement. We disagree. The record contains no support for defendant's claim that the agreement included a prohibition against scoring Offense Variable 12 based on the number of criminal sexual penetrations that occurred during the criminal transaction for which defendant stands convicted.

We decline appellate consideration of defendant's challenge to the voluntary and understanding nature of his plea. Defendant failed to preserve this challenge by timely filing a motion in the trial court. MCR 6.311(C); MCR 7.208(B); *People v Corteway*, 212 Mich App 442, 447; 538 NW2d 60 (1995).

Finally, defendant is not entitled to resentencing. The sentencing court was not required to conduct an evidentiary hearing where the record fails to unequivocally demonstrate that defendant advanced an accuracy challenge to information contained in the presentence investigation report. Nevertheless, even had defendant challenged the accuracy of the statements contained in the report that

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

indicated that he had engaged in two criminal sexual penetrations of the victim, the court's failure to address such a challenge would have been harmless. The failure to respond would have had no determinative impact on the sentence where the report indicated that codefendant engaged in three criminal sexual penetrations of the victim, where defendant failed to challenge the accuracy of this information and where this information supported the fifty-point score given Offense Variable 12. *People v Mooney*, 216 Mich App 367, 379-380; 549 NW2d 65 (1996); *People v Daniels*, 192 Mich App 658, 675; 482 NW2d 176 (1992); Michigan Sentencing Guidelines Manual (2d ed; 1988), p 45.

Affirmed.

/s/ Michael J. Kelly

/s/ Michael R. Smolenski

/s/ William J. Giovan