

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JAMES HOWARD VISGER,

Defendant-Appellant.

UNPUBLISHED

July 1, 1997

No. 192650

Washtenaw Circuit Court

LC No. 95-003690-FC

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JAMES HOWARD VISGER,

Defendant-Appellant.

No. 194823

Washtenaw Circuit Court

LC No. 95-003691-FC

Before: McDonald, P.J., and Reilly and O'Connell, JJ.

PER CURIAM.

Defendant pleaded guilty to assault with intent to rob while armed, MCL 750.89; MSA 28.284 (LC No. 95-003690-FC), and armed robbery, MCL 750.529; MSA 28.797 (LC No. 95-003691-FC) and was sentenced to concurrent terms of from four to fifteen and five to fifteen years' imprisonment. He appeals as of right. We affirm defendant's convictions but remand for resentencing.

Defendant's motion to suppress statements made to law enforcement officers was properly denied. Our review reveals, under the totality of the circumstances, defendant's confession was freely

and voluntarily made. *People v Haywood*, 209 Mich App 217; 530 NW2d 497 (1995); *People v Jobson*, 205 Mich App 708; 518 NW2d 526 (1994).

Defendant is, however, entitled to a resentencing. The sentencing court inadequately responded to the claimed inaccuracies in the presentence report raised at sentencing.¹ The court improperly concluded defendant was not permitted to challenge information contained in the Monroe County presentence report that was attached to the report for the instant offenses. *People v Lawrence*, 206 Mich App 378; 522 NW2d 654 (1994). A defendant's right to due process may be violated if his sentence is based on an extensively and materially false foundation. *People v Mitchell*, 454 Mich 145; 560 NW2d 600. Here defendant's attempts to challenge the accuracy of certain information were cut short by the court. At the resentencing defendant is to be afforded the opportunity to challenge any information presented to the sentencing court for consideration in passing sentence. We also note Defendant was entitled to have the statement indicating he had never been treated for substance abuse stricken from the presentence report after successfully challenging its accuracy. MCR 6.425(D)(3); *People v Britt*, 202 Mich App 714; 509 NW2d 914 (1993).

We note defendant's sentence for armed robbery was within the recommended range of the sentencing guidelines and is therefore presumptively proportionate. *People v Blount*, 197 Mich App 174; 494 NW2d 829 (1992). Moreover, a defendant who pleads guilty and is sentenced in accordance with a sentencing agreement waives the right to challenge the sentence unless there is also an attempt to withdraw the plea for a sound legal reason. *Id.* Defendant made no such attempt.

Defendant's convictions are affirmed, but the case is remanded for resentencing. We do not retain jurisdiction.

/s/ Gary R. McDonald
/s/ Maureen Pulte Reilly
/s/ Peter D. O'Connell

¹ Defendant failed to meet the initial burden necessary to raise the claim a prior conviction was obtained without counsel or a proper waiver of counsel. *People v Zinn*, 217 Mich App 340; 551 NW2d 704 (1996).