

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JOE ALAN ELSTON,

Defendant-Appellant.

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UNPUBLISHED

July 11, 1997

No. 190303

Genesee Circuit Court

LC No. 95-052323 FC

Before: Cavanagh, P.J., and Doctoroff and D.A. Teeple\*, JJ.

MEMORANDUM.

Defendant pleaded guilty to third-degree criminal sexual conduct, MCL 750.520d; MSA 28.788(4), and was sentenced to ten to fifteen years' imprisonment. Defendant appeals as of right. We vacate defendant's sentence and remand for resentencing. This case is being decided without oral argument pursuant to MCR 7.214(E).

Defendant challenged the accuracy of a statement contained in the presentence investigation report that indicated that he and the victim had engaged in thirty acts of fellatio over a two-year period. The trial court failed to resolve this claimed inaccuracy. *People v Brooks*, 169 Mich App 360, 365; 425 NW2d 555 (1988). Moreover, the trial court used multiple instances of sexual misconduct, and inferences drawn therefrom, to score the sentence information report and to impose a sentence that constituted an upward departure from the guidelines' range. Under these circumstances, we vacate defendant's sentence and remand to permit the trial court to address the claimed inaccuracy and to resentence defendant. *People v Landis*, 197 Mich App 217, 219; 494 NW2d 865 (1993).

Defendant's remaining issues are moot. *People v Greenberg*, 176 Mich App 296, 302; 439 NW2d 336 (1989).

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

Reversed and remanded. We do not retain jurisdiction.

/s/ Mark J. Cavanagh

/s/ Martin M. Doctoroff

/s/ Donald A. Teeple