

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

NAKIA DIMETTERIUS PRUETT,

Defendant-Appellant.

UNPUBLISHED

June 12, 2007

No. 269795

Wayne Circuit Court

LC No. 05-012663-02

Before: Davis, P.J., and Hoekstra and Donofrio, JJ.

PER CURIAM.

Defendant appeals as of right from his sentences of one and one-half to 20 years in prison imposed on his convictions of delivery of less than 50 grams of cocaine, MCL 333.7401(2)(a)(iv). Because no evidence indicates that the challenged inaccuracies influenced defendant's sentences, we affirm defendant's sentences, but remand this matter for the preparation of a corrected presentence report. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Following a bench trial, defendant was convicted of two counts of delivery of less than 50 grams of heroin, and acquitted of felon in possession of a firearm, MCL 750.224f, and possession of a firearm during the commission of a felony, MCL 750.227b. At sentencing, defense counsel indicated that the presentence report contained several inaccuracies. Counsel noted that his surname was misspelled, but acknowledged that that particular error was not "substantive." In addition, counsel, who was retained, stated that the report erroneously indicated that defendant owed \$400 in appointed counsel fees. In response to this correction, the trial court stated, "Agreed." Finally, counsel stated that defendant contended both that he had completed a substance abuse program and had not admitted to drinking alcohol on a daily basis, in contrast to statements in the report. The trial court did not respond to this assertion. The trial court rejected the recommendation that defendant receive a sentence of probation, and sentenced defendant to concurrent terms of one and one-half to 20 years in prison, to be served consecutively to the term he was serving on parole at the time he committed the instant offenses. Defendant's minimum terms were within the guidelines range of five to 23 months.

At sentencing, either party may challenge the accuracy or relevancy of any information contained in the presentence report. MCL 771.14(6); MCR 6.425(E)(1)(b). A defendant has the right to be sentenced on accurate information. A sentencing court must respond to allegations of inaccuracies in a presentence report. *People v Daniels*, 192 Mich App 658, 675; 482 NW2d 176

(1991). However, if an alleged inaccuracy had no determinative effect on the sentence imposed, the sentencing court's failure to respond can be considered harmless error. *People v McAllister*, 241 Mich App 466, 473; 616 NW2d 203 (2000), rem in part on other grounds 465 Mich 884; 636 NW2d 137 (2001). We review a sentencing court's response to a claim of inaccuracies in the presentence report for an abuse of discretion. *People v Spanke*, 254 Mich App 642, 648; 658 NW2d 504 (2003).

We conclude that although the trial court did not respond clearly to each inaccuracy alleged by defendant, defendant is not entitled to resentencing, but is entitled to have the presentence report corrected. The alleged inaccuracies included a misspelling of defense counsel's name, a statement that defendant owed \$400 in appointed counsel fees when counsel was in fact retained, and a statement that defendant failed to complete a substance abuse program and admitted drinking alcohol on a daily basis. Defense counsel acknowledged that the spelling error was not substantive. The trial court did not comment on this error, but no evidence showed that the error had any effect whatsoever on the trial court's sentencing decision. The trial court agreed that defendant did not owe \$400 in counsel fees, but did not strike that information from the report. We assume that because the trial court agreed that this statement was erroneous, it had no effect on the sentence imposed. The trial court did not respond to defendant's assertion that he had completed a substance abuse program and had not admitted to drinking alcohol on a daily basis; however, the trial court made no reference to this assertion when it imposed sentence. We conclude that although the trial court's response to defendant's allegations was less than complete, it did not constitute an abuse of discretion, *Spanke, supra*, and that because no evidence indicates that the inaccuracies influenced the sentence imposed, the failure to respond completely was harmless error. *McAllister, supra*.

If a sentencing court finds that challenged information is inaccurate or irrelevant, that finding must be made part of the record and the information must be corrected or stricken from the report. MCL 771.14(6); MCR 6.425(E)(2)(a). When a sentencing court disregards information challenged as inaccurate, the court effectively determines that the information is irrelevant. The defendant is entitled to have the information stricken from the report. *Spanke, supra* at 649. Defendant is entitled to have the inaccurate information regarding fees owed and the challenged information regarding his failure to complete a substance abuse program and his consumption of alcohol stricken from the report. *Id.*

Sentences affirmed; case remanded for the preparation of a corrected presentence report. We do not retain jurisdiction.

/s/ Alton T. Davis
/s/ Joel P. Hoekstra
/s/ Pat M. Donofrio