

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

TELLIOUS GENERA PENDELTON, a/k/a
TELLIOUS GENORA PENDELTON,

Defendant-Appellant.

UNPUBLISHED

July 1, 2008

No. 278408

Muskegon Circuit Court

LC No. 06-052867-FH

Before: Meter, P.J., and Smolenski and Servitto, JJ.

PER CURIAM.

Defendant pleaded guilty of first-degree home invasion, MCL 750.110a(2), and resisting or obstructing a police officer, MCL 750.81d(1). He was sentenced as a second habitual offender, MCL 769.10, to concurrent prison terms of 10 to 30 years for the home invasion conviction and one to three years for the resisting or obstructing conviction. He appeals by delayed leave granted. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant argues that he is entitled to resentencing because the presentence report did not provide accurate and complete information about his background. A sentence is invalid if it is based on inaccurate information. *People v Miles*, 454 Mich 90, 96; 559 NW2d 299 (1997). Where the court imposes an invalid sentence, resentencing is required. *People v Mutchie*, 251 Mich App 273, 274; 650 NW2d 733 (2002), aff'd 468 Mich 50 (2003).

The court must be provided with a presentence report before a defendant is sentenced. MCR 6.425. The purpose of a presentence report is to give the trial court as much information as possible so that the sentence can be tailored to the circumstances of the individual defendant. *Morales v Michigan Parole Bd*, 260 Mich App 29, 45-46; 676 NW2d 221 (2003). A presentence report is presumed accurate and may be relied on by the trial court unless effectively challenged by the defendant. *People v Grant*, 455 Mich 221, 233-234; 565 NW2d 389 (1997); *People v Callon*, 256 Mich App 312, 334; 662 NW2d 501 (2003).

At sentencing, both defendant and his attorney agreed that, apart from an error in the spelling of defendant's name, there were no corrections to be made. Therefore, defendant waived any claim of error. *People v Carter*, 462 Mich 206, 215-216, 220; 612 NW2d 144 (2000).

Defendant also argues that his minimum sentences are disproportionate because the trial court did not consider various mitigating factors that would have made a lesser sentence proportionate. However, the ten-year minimum sentence was within the legislative guidelines range and defendant has not shown any error in the scoring of the guidelines or reliance on inaccurate information. A sentence within the guidelines range is presumptively proportionate, *People v Daniel*, 207 Mich App 47, 54; 523 NW2d 830 (1994), and “this Court may not consider challenges to a sentence based exclusively on proportionality, if the sentence falls within the guidelines.” *People v Pratt*, 254 Mich App 425, 429-430; 656 NW2d 866 (2002); MCL 769.34(10). Further, by agreeing to a ten-year minimum sentence as part of the plea agreement, defendant acknowledged the proportionality of the sentence. *People v Cobbs*, 443 Mich 276, 285; 505 NW2d 208 (1993).

Defendant further argues that his sentences constituted cruel and unusual punishment. We disagree. As noted, the ten-year minimum sentence is presumptively proportionate, and a proportionate sentence is not cruel and unusual. *People v Drohan*, 264 Mich App 77, 91-92; 689 NW2d 750 (2004); *People v Terry*, 224 Mich App 447, 456; 569 NW2d 641 (1997). Considering that defendant agreed to a ten-year minimum sentence as part of his plea agreement, he has not overcome the presumption of proportionality. Further, habitual offender enhancements do not violate constitutional prohibitions against cruel and unusual punishment. *People v Chandler*, 211 Mich App 604, 616; 536 NW2d 799 (1995), overruled on other grounds *People v Edgett*, 220 Mich App 686; 560 NW2d 360 (1996); *People v Potts*, 55 Mich App 622, 639; 223 NW2d 96 (1974).

To the extent defendant argues that the guidelines were scored in violation of *Blakely v Washington*, 542 US 296; 124 S Ct 2531; 159 L Ed 2d 403 (2004), we find no error. It is well established that Michigan’s indeterminate sentencing scheme is not affected by *Blakely*. *People v McCuller*, 479 Mich 672, 676-678; 739 NW2d 563 (2007); *People v Harper*, 479 Mich 599, 603-604; 739 NW2d 523 (2007); *People v Drohan*, 475 Mich 140; 715 NW2d 778 (2006).

Affirmed.

/s/ Patrick M. Meter
/s/ Michael R. Smolenski
/s/ Deborah A. Servitto