

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DAVID WATT,

Defendant-Appellant.

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UNPUBLISHED

April 8, 2003

No. 238749

Oakland Circuit Court

LC No. 01-180081-FH

Before: Gage, P.J., and Murphy and Jansen, JJ.

PER CURIAM.

Defendant was convicted, following a jury trial, of first-degree home invasion, MCL 750.110a(2), unlawful driving away of an automobile, MCL 750.413, and domestic violence, MCL 750.81(2). Defendant was sentenced as a third habitual offender, MCL 769.11, to seven to forty years' imprisonment for the first-degree home invasion conviction, six to ten years' imprisonment for the unlawful driving an automobile conviction, and to ninety-three days for the domestic violence conviction. Defendant appeals as of right. We affirm. This appeal is being heard without oral argument pursuant to MCR 7.214(E).

Subsequent to sentencing, defendant filed a motion for resentencing contending that the trial court did not determine whether defendant and defense counsel had an opportunity to read and discuss the presentence report, and that because of this failure defendant did not have an opportunity to object to prejudicial inaccuracies in the presentence report. The trial court denied the motion finding that defendant did not specify any inaccuracies, certain issues raised by defendant had no bearing on his sentence, and because defendant's sentence was still within the guidelines.

Defendant's sole issue on appeal is that resentencing is required because the trial court did not determine whether defendant or defense counsel had an opportunity to review the presentence report, thus, denying defendant an opportunity to object to inaccurate information that was prejudicial. We disagree. We review the trial courts decision to deny a motion for resentencing for abuse of discretion. *People v Puckett*, 178 Mich App 224, 227; 443 NW2d 470 (1989). To the extent this issue requires application of the court rules we review de novo. See, generally, *People v Fosnaugh*, 248 Mich App 444, 449; 639 NW2d 587 (2001). Resentencing is only appropriate when a reviewing court concludes the sentence imposed is invalid. *People v Mutchie*, 251 Mich App 273, 274; 670 NW2d 733 (2002).

Any claim that defendant or defense counsel did not have an opportunity to review the presentence report is without merit. Defense counsel made a statement, during the sentencing hearing, that defendant was aware that the guidelines did not have a probationary sentence for his offense and the variables involved. This comment suggests that defendant and defense counsel reviewed the presentence report prior to sentencing. Therefore, the record does not support defendant's claim that he did not have an opportunity to review the presentence report. However, the trial court never specifically asked defendant or defense counsel on the record if they had an opportunity to read or discuss the presentence report.

MCR 6.425(D)(2) provides, in relevant part:

. . . At sentencing the court, complying on the record, must:

- (a) determine that the defendant, the defendant's lawyer, and the prosecutor have had an opportunity to read and discuss the presentence report, [and]
- (b) give each party an opportunity to explain, or challenge the accuracy or relevancy of, any information in the presentence report, and resolve any challenges . . .

The court rule requires that the trial court *determine* that defendant and defendant's lawyer have had an opportunity to read and discuss the presentence report. Although a vague statement, the court could have determined from defense counsel's statement, on the record, that defendant and defense counsel had read and discussed the presentence report. Because defendant is entitled to an accurate presentence report we will review the alleged inaccuracies in the presentence report and scoring of the prior record variables based on the record even though defendant did not raise objection until his motion for resentencing. *People v Malkowski*, 385 Mich 244, 249; 188 NW2d 559 (1971).

Defendant argues, on appeal, that he was prejudiced by a presentence report that contained inaccurate information including: statements that an attorney was present in prior convictions, inaccurate arrest information, inaccurate job information,<sup>1</sup> improper victim's impact statement, inaccurate agent's description of the offense, and improper scoring of prior record variables.

Defendant contends that prior record variable (PRV) 6 was improperly scored five points for a November 7, 1992, disorderly conduct conviction because the presentence report indicates a pending disposition and sentencing date over ten years old. The presentence report indicates that defendant was on bond for the disorderly conduct offense when the present offense occurred. MCL 777.56. No objection was made during sentencing, and no proofs were asserted during the

<sup>1</sup> On appeal, defendant fails to specify what job information was inaccurate in the presentence report. The defendant may not merely announce his position and leave it to this Court to discover and rationalize the basis for his claims, and thus, the issue was not properly presented for appellate review. *People v Kelly*, 231 Mich App 627, 640-641; 588 NW2d 480 (1998); *People v Leonard*, 224 Mich App 569, 588; 569 NW2d 663 (1997).

motion for resentencing in support of defendant's contention that the presentence report was inaccurate in this respect. *Puckett, supra*, 178 Mich App 227. Therefore, we find there was no abuse of discretion in denying resentencing on this basis. *Id.*

Defendant also contends that, for two of his prior convictions, the presentence report improperly indicated that an attorney was present on his behalf. Defendant has failed to set forth any basis or authority for his claim that the lack of counsel was a reason to be considered when scoring the prior record variable or when viewing the presentence report for sentencing, and thus, defendant has failed to properly present this issue for appellate review. *People v Kelly*, 231 Mich App 627, 640-641; 588 NW2d 480 (1998). Further, there was no indication that the trial court took this into account in sentencing.

Defendant also challenges the PRV score and the presentence report because of two convictions on the basis that the presentence report incorrectly listed the number of days defendant received in jail. However, defendant has cited no authority, which supports that the number of days in jail for these offenses would change the scoring of his prior record variable or would have any effect on sentencing, and thus, defendant failed to properly present the issue for appellate review. *Kelly, supra*. Further, there is no indication that minor inaccuracies in time spent in jail for other convictions had any effect on defendant's sentence.

Defendant's challenge to the agent's statement in the presentence report is without merit. The agent's description is consistent with the testimony, and further defendant's description of the offense was also included for the court to review. No proofs were asserted during the motion for resentencing in support of this contention that the agent's statement was improper. *Puckett, supra*, 178 Mich App 227. Moreover, there is no indication that defendant's sentence was based on the challenged statements. Thus, the trial court did not abuse its discretion in denying defendant's motion for resentencing on this basis.

Defendant's claim that the victim's impact statement, in the presentence report, was cause for resentencing is without merit. The victim of a crime has a statutory right to make a written impact statement for the sentencing of the defendant, and impact statement may include an "explanation of the nature and extent of any physical, psychological, or emotional harm or trauma suffered by the victim." MCL 780.763; *People v Steele*, 173 Mich App 502, 504-505; 434 NW2d 175 (1988). Further, defendant had an opportunity to present his version of what happened in a letter to the court and at the sentencing hearing. We find that the victim's statements were within the victim's statutory rights.

Even if there was an error in scoring the prior record variable or minor inaccuracies in the presentence report, it was harmless because defendant was still sentenced within the appropriate guidelines range. *Mutchie, supra*, 251 Mich App 274-275. Assuming, defendant's arguments with respect to the scoring of the prior record variables is correct, the proper sentencing guidelines range would be from 51 to 127 months' imprisonment. The trial court sentenced defendant to eighty-four months' imprisonment for the first-degree home invasion conviction, which was within the range defendant alleges is proper. Because defendant's sentences were within the appropriate guidelines range, any error in the scoring of the prior record variables was harmless. Defendant and defense counsel were both provided an opportunity to raise issue with the court and to explain to the court any circumstances to consider in sentencing, which is the right that the court rule was designed to protect. Moreover, the testimony from sentencing

suggests that defendant and defense counsel had reviewed and discussed the presentence report, but failed to raise any objection at the sentencing hearing. Furthermore, the trial court had an opportunity to change its sentence, but instead indicated that regardless of defendant's assertions the sentence was within the guidelines. Thus, this issue does not warrant appellate relief.

Affirmed.

/s/ Hilda R. Gage

/s/ William B. Murphy

/s/ Kathleen Jansen