

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

RANDY S. DANIELS

Defendant-Appellant.

UNPUBLISHED

August 12, 2003

No. 240744

Wayne Circuit Court

LC No. 01-008613-01

Before: Donofrio, P.J., and Bandstra and O’Connell, JJ.

PER CURIAM.

Defendant appeals as of right his bench trial convictions for aggravated stalking, MCL 750.411i, and domestic violence, MCL 750.81(2). Defendant was sentenced as a fourth habitual offender, MCL 769.12, to forty-six months to fifteen years in prison for the aggravated stalking conviction, with 105 days credit, and to time served for the domestic violence conviction. We affirm.

Defendant’s sole issue on appeal is that his presentence investigation report (PSIR) provides the incorrect number of prior misdemeanor and felony convictions. Because defendant raised this issue at his first sentencing hearing, this issue is properly preserved for our review. *People v Bailey (On Remand)*, 218 Mich App 645, 647; 554 NW2d 391 (1996). Issues regarding the accuracy of a PSIR are constitutional in nature. *People v Hoyt*, 185 Mich App 531, 533; 462 NW2d 793 (1990). This Court reviews questions of constitutional law de novo. *People v Connor*, 209 Mich App 419, 423; 531 NW2d 734 (1995).

Defendant argues, and the prosecution agrees, that he is entitled to correction of the face page and page one of his PSIR so that it correctly indicates four prior felony and four prior misdemeanor convictions. MCL 771.14(6) provides:

At the time of sentencing, either party may challenge, on the record, the accuracy or relevancy of any information contained in the presentence investigation report. . . . If the court finds on the record that the challenged information is inaccurate or irrelevant, that finding shall be made a part of the record, the presentence investigation report shall be amended, and the inaccurate or irrelevant information shall be stricken accordingly before the report is transmitted to the department of corrections.

MCR 6.425(D)(3) provides:

If any information in the presentence report is challenged, the court must make a finding with respect to the challenge or determine that a finding is unnecessary because it will not take the challenged information into account in sentencing. If the court finds merit in the challenge or determines that it will not take the challenged information into account in sentencing, it must direct the probation officer to

(a) correct or delete the challenged information in the report, whichever is appropriate, and

(b) provide defendant's lawyer with an opportunity to review the corrected report before it is sent to the Department of Corrections.

When a defendant claims that a presentence report contains an error, the court may hold an evidentiary hearing to determine the report's accuracy, may accept the defendant's unsworn statement, or may ignore the alleged misinformation when sentencing. MCR 6.425(D)(3); *People v Spanke*, 254 Mich App 642, 648; 658 NW2d 504 (2003). If the court finds that the 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(D)(3)(a); *Hoyt, supra*, 185 Mich App 534.

We note at the outset that defendant does not dispute the accuracy of his sentence, but rather, seeks only to have his PSIR reflect the correct number of prior felony and misdemeanor convictions. Upon review of the PSIR filed by defendant on appeal, we conclude that defendant's assertion of error is supported by the record. The Adult History section of defendant's PSIR indicates that, in fact, there were a total of eight prior convictions rather than ten. Furthermore, the trial court's determination at the sentencing hearing, that defendant's 1994 conviction for domestic violence was a misdemeanor rather than a felony, further indicates that of those eight prior convictions, four were felonies and four were misdemeanors. Therefore, the face page of the PSIR, that states defendant's prior record consisted of five prior misdemeanors and five prior felonies, is inaccurate. Further, page one of defendant's PSIR, that states defendant's current felony conviction is his sixth is also incorrect.

By ordering that defendant's 1994 record be pulled for review, the trial court essentially held an evidentiary hearing to determine the accuracy of defendant's PSIR with respect to his prior convictions. See *Spanke, supra*, 254 Mich App 648-650. Because the trial court found on the record that the challenged information was inaccurate, defendant is entitled to have his PSIR corrected so that it accurately reflects the correct number of prior convictions. Accordingly, we remand this case to the trial court for the ministerial task of correcting defendant's PSIR, and order the trial court to forward a corrected copy of the PSIR to the department of corrections.

Defendant's convictions and sentences are affirmed, but the case is remanded to the trial court for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Pat M. Donofrio

/s/ Richard A. Bandstra

/s/ Peter D. O'Connell