

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JUAN D. BULLOCK,

Defendant-Appellant.

UNPUBLISHED

September 27, 2007

No. 271209

Wayne Circuit Court

LC No. 04-003502-02

Before: Markey, P.J., and Saad and Wilder, JJ.

MEMORANDUM.

Following a bench trial, defendant was convicted of armed robbery, MCL 750.529, and sentenced to a prison term of 45 months to 15 years. He appeals by right. We remand for further proceedings. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant's sole claim on appeal is that the trial court failed to resolve a challenge to the certain information in the presentence report and sentenced him on the basis of allegedly inaccurate information. The trial court's response to a challenge to the accuracy of the presentence report is reviewed for an abuse of discretion. *People v Spanke*, 254 Mich App 642, 648; 658 NW2d 504 (2003).

A presentence report is presumed accurate and the trial court may rely on it unless the defendant effectively challenges it. *People v Callon*, 256 Mich App 312, 334; 662 NW2d 501 (2003). "The sentencing court must respond to challenges to the accuracy of information in a presentence report; however, the court has wide latitude in responding to these challenges." *Spanke, supra* at 648. In responding to the challenge, the court "may determine the accuracy of the information, accept the defendant's version, or simply disregard the challenged information." *Id.* If the court elects to determine the accuracy of the information, the prosecutor "must prove by a preponderance of the evidence that the facts are as asserted." *People v Ratkov (After Remand)*, 201 Mich App 123, 125; 505 NW2d 886 (1993), remanded 447 Mich 984 (1994). If the court chooses to disregard the information, it must indicate on the record that it did not consider the information in determining the defendant's sentence. If the court finds the information irrelevant or inaccurate, the presentence report shall be amended, and the inaccurate or irrelevant information must be stricken before sending the report to the Department of Corrections. MCL 771.14(6); *Spanke, supra* at 649.

Before passing sentence, the trial court noted that defendant had accumulated 12 misconduct citations in prison. Defendant disputed the accuracy of that information. The trial court failed to respond to the challenge and sentenced defendant at the upper limit of the guidelines. Because it appears that the information affected defendant's sentence, defendant would be entitled to resentencing if the information were inaccurate. MCL 769.34(10). Therefore, it is necessary to remand for a resolution of defendant's challenge to the information in the presentence report. On remand, the trial court shall resolve defendant's challenge to the information regarding his misconduct citations. If the court determines that the information was accurate, defendant's sentence is affirmed. If the court determines that the information was inaccurate or irrelevant, it shall correct the presentence report and resentence defendant.

We remand for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Jane E. Markey
/s/ Henry William Saad
/s/ Kurtis T. Wilder