

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

GRANT WILLIAM STOKER,

Defendant-Appellant.

UNPUBLISHED

January 23, 2001

No. 225176

Genesee Circuit Court

LC No. 98-003621-FH

Before: Markey, P.J., and Whitbeck and J. L. Martlew*, JJ.

PER CURIAM.

Defendant appeals by delayed leave granted his plea-based conviction of criminal sexual conduct in the second degree (CSC II), MCL 750.520c; MSA 28.788(3), and the resulting sentence of ten to fifteen years in prison. We affirm defendant's conviction and sentence, but remand for preparation of a corrected presentence report. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant was charged with criminal sexual conduct in the third degree, MCL 750.520d(1)(a); MSA 28.788(4)(1)(a), and indecent exposure, MCL 750.335a; MSA 28.567(1), arising from an incident in which defendant had sexual intercourse with a fifteen-year-old girl. Defendant pleaded guilty to CSC II and indecent exposure in return for the prosecution's agreement to forego pursuing an habitual offender charge. The agreement allowed defendant to establish the factual basis for the charge of CSC II by admitting that he engaged in sexual intercourse with the girl. The court imposed a sentence of one year in jail for the conviction of indecent exposure, a sentence not challenged on appeal, but postponed sentencing on the conviction of CSC II pending receipt of further information.

At sentencing for the conviction of CSC II, defendant objected to various statements in the presentence report, including that he forced sexual intercourse on the victim, that he did not take responsibility for his actions, and that he had made a pass at his fiancée's daughter. The court did not explicitly resolve these challenges; however, during a discussion of the scoring of the guidelines, the court found that the victim's account of the event as related in the presentence report (i.e., that defendant forced sexual intercourse on her) supported the probation department's scoring of the guidelines. In imposing sentence, the court noted that although defendant had two prior felony convictions and several alcohol-related misdemeanor convictions, the court did not

Circuit Judge, sitting on the Court of Appeals by assignment.

consider the misdemeanor convictions when fashioning its sentence. The court indicated that even looking at the facts in the light most favorable to defendant, it was clear that defendant had exploited a young person. The court sentenced defendant to ten to fifteen years in prison for the conviction of CSC II with credit for forty-three days. The minimum term was within the guidelines.

Defendant moved for resentencing or for correction of the presentence report arguing that he was denied due process because the trial court failed to resolve his challenges to the accuracy of various allegations in the report. At a hearing on defendant's motion, the court stated that the allegations that defendant did not accept responsibility for his actions and that he had made a pass at his fiancée's daughter had not entered into its sentencing consideration. The court ordered that the report be amended to reflect that a dispute existed as to whether defendant accepted responsibility for his actions and ordered that the allegation regarding defendant's fiancée's daughter be stricken from the report. Regarding the allegation that the offense was forcible, the court stated that that allegation had been addressed when it determined that the sentencing guidelines were scored correctly. Nevertheless, the court noted, it had viewed the evidence in the light most favorable to defendant when imposing sentence. The court declined to order the allegation regarding defendant's use of force stricken from the report.

A defendant has a due process right to be sentenced on the basis of complete, accurate, and reliable information. *People v Lee*, 391 Mich 618, 636-637; 218 NW2d 655 (1974). The purpose of the presentence report is to provide the court with as much information as possible so that the sentence can be tailored to both the offense and the offender. *People v Miles*, 454 Mich 90, 97; 559 NW2d 299 (1997). Either party may challenge the accuracy or relevancy of any information contained in the report. MCL 771.14(6); MSA 28.1144(6); MCR 6.425(D)(2)(b). When the defendant claims that the report contains an error, the court may hold an evidentiary hearing to determine the accuracy of the challenged information, accept the defendant's version, or ignore the information when imposing sentence. *People v Brooks*, 169 Mich App 360, 365; 425 NW2d 555 (1988); MCR 6.425(D)(3). Once a defendant effectively challenges a factual assertion, the prosecution has the burden of proving the fact by a preponderance of the evidence. *People v Ratkov (After Remand)*, 201 Mich App 123, 125; 505 NW2d 886 (1993), rem 447 Mich 984; 525 NW2d 454 (1994). If the 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); MSA 28.1144(6); MCR 6.425(D)(3)(a); *People v Hoyt*, 185 Mich App 531, 534; 462 NW2d 793 (1990).

Defendant argues that he was denied due process when the trial court failed to properly resolve challenges to various allegations in the presentence report. We affirm defendant's conviction, but remand for preparation of a corrected presentence report. At the hearing on defendant's motion for resentencing or for correction of the presentence report, the trial court stated on the record that the allegation that defendant failed to accept responsibility for his actions did not figure into its sentencing consideration. The trial court's order that defendant's assertion that he did accept responsibility be inserted into the report was insufficient. Because the trial court found the challenged allegation to be irrelevant, defendant was entitled to have it stricken from the report. MCL 771.14(6); MSA 28.1144(6); MCR 6.425(D)(3). Regarding the allegation that defendant's act was forcible, the trial court did not find that the prosecution had

proven the fact by a preponderance of the evidence. *Ratkov, supra*. Because the alleged inaccuracy had no determinative effect on the sentence, the trial court's failure to respond in a proper manner may be considered harmless error. *People v Daniels*, 192 Mich App 658, 675; 482 NW2d 176 (1992). Nevertheless, the allegation must be stricken from the report. *People v Grove*, 455 Mich 439, 477; 566 NW2d 547 (1997); MCR 6.425(D)(3).

Furthermore, defendant argues that his sentence is disproportionate to his circumstances and to those of the offense. *People v Milbourn*, 435 Mich 630, 636; 461 NW2d 1 (1990). We disagree and affirm defendant's sentence. The key test of the proportionality of a sentence is whether it reflects the seriousness of the matter. *People v Houston*, 448 Mich 312, 320; 532 NW2d 508 (1995). Defendant's minimum term of ten years was within the sentencing guidelines, and thus is presumptively proportionate. *People v Hogan*, 225 Mich App 431, 437; 571 NW2d 737 (1997). The evidence showed that defendant engaged in sexual intercourse with a fifteen-year-old girl. Defendant had a prior record consisting of two felony convictions, and at sentencing attempted to place some blame for the incident on the victim herself by stating that she behaved suggestively. The factors defendant cited, i.e., his lack of a prior record of violent offenses and his work history, do not overcome the presumption that his minimum term is proportionate. *People v Daniel*, 207 Mich App 47, 54; 523 NW2d 830 (1994).

Defendant's conviction and sentence are affirmed, and this case is remanded for preparation of a corrected presentence report. We do not retain jurisdiction.

/s/ Jane E. Markey
/s/ William C. Whitbeck
/s/ Jeffrey L. Martlew