

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

COY W. HOPKINS, SR.,

Defendant-Appellant.

UNPUBLISHED

June 22, 2001

No. 222239

Oakland Circuit Court

LC No. 86-076869-FC

Before: Bandstra, C.J., and White and Collins, JJ.

PER CURIAM.

Defendant appeals by delayed leave granted from an order denying his motion for relief from judgment. Following a bench trial, defendant was convicted in 1987 of third-degree criminal sexual conduct, MCL 750.520d, and sentenced to eight to fifteen years' imprisonment. We affirm defendant's conviction, but remand for further proceedings regarding the presentence report.

Because this Court has already accepted defendant's application for leave to appeal and remanded for an evidentiary hearing on defendant's claim that a vasectomy rendered him incapable of producing the sperm found on the complainant's nightgown, defendant's first two issues on appeal are moot. This Court has effectively treated defendant's present appeal as a direct appeal by right by addressing the merits of his arguments; and, on remand, the factual predicate of defendant's substantive argument was undermined by the doctor who performed defendant's surgery.¹

Defendant also argues that his presentence report must be corrected to delete information that was challenged as inaccurate at sentencing, but which was not considered by the trial court. At sentencing, defendant objected to the presentence report's inclusion of several criminal offenses that were never prosecuted. Defendant denied being involved in or guilty of any of the listed offenses. Defendant also objected to allegations indicating that he had previously been arrested for sexually related crimes and had been involved in inappropriate sexual activities for

¹ On remand, after interviewing defendant's surgeon, both parties stipulated to withdraw defendant's motion for new trial. Therefore, we need not consider this issue further.

more than twenty years and again denied the allegations. The trial court did not specifically resolve defendant's challenges, but stated that "even not considering allegations that you have committed similar conduct in the past to people similarly disabled, just the conduct in this case along [sic] warrants sending you to state prison."

A presentence report properly may inquire into the antecedents, character, and circumstances of the defendant and are integral to sentencing. *People v Miles*, 454 Mich 90, 97; 559 NW2d 299 (1997). In sentencing a defendant, the trial court may consider other criminal activity for which no conviction resulted, including dismissed charges, or the facts underlying uncharged offenses, pending charges, and acquittals, provided that the defendant is given an opportunity for refutation and the information is supported by reliable evidence. *People v Lawrence*, 206 Mich App 378, 379; 522 NW2d 654 (1994); *People v Salgat*, 173 Mich App 742, 746; 434 NW2d 229 (1988). Once a defendant has effectively challenged an adverse factual assertion contained in the presentence report or any other controverted issues of fact relevant to the sentencing decision, the prosecution 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).

A defendant has a right to be sentenced on the basis of accurate information, and a court must respond to allegations of inaccuracies. *People v McAllister*, 241 Mich App 466, 473; 616 NW2d 203 (2000). If the trial court finds on the record that challenged information in a presentence report is inaccurate or irrelevant, that finding shall be made a part of the record and the inaccurate or irrelevant information shall be stricken accordingly before the report is transmitted to the Department of Corrections. MCL 771.14(6).²

Here, the trial court found that the additional information challenged by defendant was unnecessary to support a prison sentence. However, the court did not strike the information from the report. It appears that the court regarded the information as irrelevant for sentencing purposes, but that is not entirely clear. Accordingly, we remand to the trial court. The trial court shall, at its option, either conduct a hearing to determine the accuracy of the challenged information, or amend defendant's presentence report to strike the challenged portions from the report and forward a corrected copy to defendant's current appellate counsel and the Department of Corrections.

Affirmed, but remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Richard A. Bandstra

/s/ Helene N. White

/s/ Jeffrey G. Collins

² At the time defendant was sentenced, this portion of the statute was codified as subsection (5) of MCL 771.14.