STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

RONALD ARCHER DRISKELL,

Defendant-Appellant.

UNPUBLISHED
August 27, 1996
ON REMAND

No. 195965
LC No. 151703

Before: McDonald, P.J., and Murphy and Bandstra, JJ.

PER CURIAM.

This case comes to us on remand from our Supreme Court. Defendant pleaded nolo contendere to operating a motor vehicle while under the influence of intoxicating liquor, third offense, and unlawful blood alcohol level, third offense (OUIL/UBAL-3), MCL 257.625(6); MSA 9.2325(6), and to being an habitual offender, second offense, MCL 769.10; MSA 28.1082.[1] Defendant was sentenced to 5 to 7 ½years' imprisonment. On appeal, we reversed defendant's habitual offender conviction, relying on *People v Doyle*, 203 Mich App 294; 512 NW2d 59 (1994) [2]. Our Supreme Court subsequently reversed *Doyle*. *People v Doyle*, 451 Mich 93; 545 NW2d 627 (1996). Therefore, in lieu of granting defendant's leave to appeal in this case, our Supreme Court reversed our prior decision, reinstated defendant's habitual offender conviction, and remanded this case to this Court for consideration of defendant's remaining issues on appeal, which were rendered moot due to our previous disposition. We affirm defendant's sentence and remand for correction of the presentence report.

First, defendant claims that his 5- to 7 ½year sentence is disproportionate. We disagree.

A defendant's sentence must be proportionate to the seriousness of the offense and the circumstances of the offender. *People v Chandler*, 211 Mich App 604, 616; 536 NW2d 799 (1995). In this case, defendant was driving with a blood alcohol level over twice the legal limit at 7:30 p.m. when he hit a hay wagon stopped in the roadway. At the time of this offense, defendant was on probation for a previous OUIL-3 conviction. Defendant has a long history of alcohol abuse, and his criminal record

indicates that he has an extensive criminal history, much of which is alcohol related. Based on the circumstances of this case, defendant's sentence is proportionate.

Next, defendant claims that the sentencing court failed to exercise its discretion by adopting the probation officer's recommendation contained in the presentence report. We find no error. This was not a case where the sentencing court blindly adopted the presentence report's recommendation; a review of the record indicates that the court realized it did not have to follow the recommendation, considered the proper factors in imposing sentence, and attempted to individualize the sentence to circumstances of this case. As previously indicated, defendant's sentence is proportionate. Even considering successful challenges to the presentence report made by defendant at sentencing, we find no abuse of discretion in the sentencing court imposing a sentence consistent with the recommendation contained in the presentence report.

Last, defendant claims, and plaintiff agrees, that the sentencing court erred by not correcting the presentence report after the court granted defendant's objections to inaccuracies contained in the report. We also agree.

At sentencing, defendant raised several challenges to allegedly inaccurate information contained in the presentence report. The sentencing court granted many of these objections and indicated that it would not consider the inaccuracies in imposing sentence. However, the presentence report was not corrected to reflect the changes.

MCR 6.425(D) provides that if the court finds merit in challenges to information contained in the presentence report, or determines that it will not take the challenged information into account in sentencing, it must direct the probation officer to correct or delete the challenged information from the report. The probation officer must also provide the defendant's lawyer with an opportunity to review the corrected report before it is sent to the department of corrections. When this procedure is not followed, the proper remedy is to remand the case to the circuit court so that the challenged information can be corrected in or deleted from the presentence report. *People v Britt*, 202 Mich App 714, 718; 509 NW2d 914 (1993). We stress that because the sentencing court did not consider the challenged information in imposing sentence, the error was harmless and defendant is not entitled to resentencing. *People v Martinez (After Remand)*, 210 Mich App 199, 202-203; 532 NW2d 863 (1995).

Defendant's sentence is affirmed and we remand for correction of the presentence report. We do not retain jurisdiction.

/s/ Gary R. McDonald
/s/ William B. Murphy
/s/ Richard A. Bandstra

[1] The plea was entered pursuant to a plea agreement whereby the prosecutor agreed to dismiss one count of driving with a suspended license, second offense, along with four supplemental informations.

[2] Unpublished memorandum opinion, docket 151703, released June 10, 1994.