

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

DENNIS MERVYN SARGENT,

Defendant-Appellee.

UNPUBLISHED
November 5, 2009

No. 287846
Allegan Circuit Court
LC No. 04-013744-FC

Before: Stephens, P.J., and Cavanagh and Owens, JJ.

MEMORANDUM.

Defendant was convicted by a jury of criminal sexual conduct in the first degree (CSC I), MCL 750.520b, and criminal sexual conduct in the second degree (CSC II), MCL 750.520c. Following a remand by our Supreme Court for resentencing on the ground that offense variable 9 (number of victims) was incorrectly scored, *People v Sargent*, 481 Mich 346, 351; 750 NW2d 161 (2008), the trial court sentenced defendant to 135 months to 44 years in prison for CSC I, and to 57 months to 15 years in prison for CSC II. Defendant again appeals as of right. We affirm. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

Defendant argues that he is entitled to resentencing. He maintains that the lack of a reasonably updated presentence information report (PSIR) and an updated guidelines scoring sheet violates his right to due process and makes it impossible for appellate counsel to determine if an error in the scoring had occurred. We disagree.

When a defendant is resentenced for a felony conviction, the sentencing court must utilize a reasonably updated PSIR. *People v Triplett*, 407 Mich 510, 511, 515; 287 NW2d 165 (1980). A party may waive the production of an updated PSIR unless the previous report is manifestly outdated. *People v Hemphill*, 439 Mich 576, 582; 487 NW2d 152 (1992).

During resentencing, the trial court stated that a PSIR and sentencing information report had been prepared, and that the recommended sentence ranges were 81 to 135 months for CSC I and 29 to 57 months for CSC II.¹ Defense counsel stated that defendant had no objections to the updated report. Counsel objected to a statement concerning defendant's previous employment

¹ The original ranges were 108 to 180 months for CSC I and 36 to 71 months for CSC II.

contained in the initial PSIR, but had no other objections. This approval of the information in the PSIR arguably waived any claim of error. *People v Carter*, 462 Mich 206, 215-216; 612 NW2d 144 (2000). However, even were we to find that defendant did not affirmatively waive the production of an updated report, defendant forfeited the issue by failing to object at the time of sentencing. Therefore, the issue is reviewable for plain error affecting defendant's substantial rights. *People v Carines*, 460 Mich 750, 763-764; 597 NW2d 130 (1999).

Defendant argues only that he was prejudiced by the fact that no updated sentencing information report was provided to the trial court. This assertion is contradicted by the trial court's explicit acknowledgement of the changed sentence information report and the changed guidelines. Further, this scoring comports with our Supreme Court's calculations, see *Sargent*, *supra* at 351. Defendant points to no other updated information that the trial court should have been provided before imposing sentence on remand. Nor does he specifically challenge the validity any of the information in the initial report or the case report on appeal. Defendant has not shown that reversible plain error occurred in this case.

Affirmed.

/s/ Cynthia Diane Stephens
/s/ Mark J. Cavanagh
/s/ Donald S. Owens