

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DWIGHT WAYNE CAMPBELL,

Defendant-Appellant.

UNPUBLISHED

May 24, 1996

No. 181991

LC No. 94-037219-FC

Before: Kavanagh, T.G.,* P.J., and R.B. Burns** and G.S. Allen,** JJ.

MEMORANDUM.

Defendant pleaded nolo contendere to first-degree criminal sexual conduct, MCL 750.520b(1)(a); MSA 28.788(2)(1)(a), and was sentenced to forty-three to seventy years' imprisonment. He appeals as of right. We remand for resentencing. This case has been decided without oral argument pursuant to MCR 7.214(A).

The trial court did not clearly erred in denying defendant's motion to suppress his statement to police, which he alleged was involuntary because it was induced by promises of assistance in locating his mother and brothers, whom he had not seen since birth. *People v Haywood*, 209 Mich App 217, 225-226; 530 NW2d 497 (1995); *People v Johnson*, 202 Mich App 281, 287; 508 NW2d 509 (1993).

Next, the record reveals that the trial court improperly considered the effect of possible disciplinary credits on defendant's sentence. *People v Fleming*, 428 Mich 408, 428; 410 NW2d 266 (1987); *People v Bates*, 190 Mich App 281, 283; 475 NW2d 392 (1991). Because the court may have increased defendant's sentence to ensure that he would remain in prison until a certain age, he must be resentenced. Moreover, we conclude that defendant's sentence, which is a significant departure

*Former Supreme Court Justice, sitting on the Court of Appeals by assignment pursuant to Administrative Order 1996-3.

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from the recommended range of the sentencing guidelines, violates the principle of proportionality. *People v Milbourn*, 435 Mich 630; 461 NW2d 1 (1990). Although some departure from the guidelines may have been appropriate, the extent of the departure in this case violates the principle of proportionality and defendant must be resentenced. See *People v Cramer*, 201 Mich App 590, 596; 507 NW2d 447 (1993). This is especially so because the sentencing court failed to properly resolve several of defendant's challenges to information in the presentence investigation report. *People v Hoyt*, 185 Mich App 531; 462 NW2d 793 (1990). However, we do not agree with defendant's claim that the sentencing court only considered the circumstances of the offense, without any consideration of the mitigating circumstances of this offender. See *People v Granderson*, 212 Mich App 673; NW2d (1995).

Resentencing shall be conducted by a different judge. *People v Evans*, 156 Mich App 68; 401 NW2d 312 (1986).

Remanded for resentencing. We do not retain jurisdiction.

/s/ Thomas G. Kavanagh

/s/ Robert B. Burns

/s/ Glenn S. Allen, Jr.