

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JOHN ADELBERT SOUTHWORTH,

Defendant-Appellant.

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UNPUBLISHED

September 27, 1996

No. 186309

LC Nos. 19-7215 and

197239

Before: Saad, P.J., and McDonald and M.A. Chrzanowski\*, JJ.

PER CURIAM.

Pursuant to a plea agreement defendant pleaded guilty to one count of assault with intent to commit sexual penetration, MCL 750.520g(1); MSA 28.788(7)(1) in each of the cases 19-7215 and 19-7239 and was sentenced concurrently to 54 to 120 months' imprisonment. On appeal defendant claims the court miscalculated OV 12 and 13 and his sentence was not proportionate.

In regard to scoring OV 12 defendant claims he should be assessed 25 points in each case rather than 50 points because there is only evidence of one penetration that did not form the basis of the conviction in each transaction. Thus the SIR sentencing range would be 18 to 48 months rather than 24 to 60 months and defendant's sentence would exceed the guidelines.

This Court remanded this matter to the trial court to conduct a hearing on defendant's motion for resentencing based on the issues raised herein on October 24, 1995. In ruling on this issue the court stated:

The court makes note in the presentence report that Mr. Southworth admitted to a counselor that he had done the same thing three or four times in the past four months with the same individual. We also have the sentencing transcript in front of us in which he admitted on one particular file that he digitally penetrated and then he

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\* Circuit judge, sitting on the Court of Appeals by assignment.

committed the act of cunnilingus on her and admitted the same. On the other file, likewise, he had two prior -- excuse me, one prior sexual act in this particular matter. And therefore the court finds at this time that the scoring under the sentencing guidelines would be correct under the particular category.

The court's scoring of OV12 is correct because it found defendant's ongoing penetrations of the victim over an extended period of time constituted acts that accrued in a continuous time sequence and displayed a single intent or goal. Thus, all counted penetrations arose out of "the same criminal transaction". *People v Raby*, \_\_\_ Mich App \_\_\_; \_\_\_ NW2d \_\_\_ (Docket No. 173809, issued 07/30/96).

We further find no abuse of discretion in the court's sentence because it was proportionate to the offense and the offender. *People v Milbourn*, 435 Mich 630; 469 NW2d 1 (1990). The sentence was within the guidelines and we find no mitigating circumstances that would justify departure from the guidelines.

Affirmed.

/s/ Henry William Saad

/s/ Gary R. McDonald

/s/ Mary A. Chrzanowski