

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

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

SHELBY LEE BILTON,

Defendant-Appellant.

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UNPUBLISHED

October 4, 1996

No. 186618

LC Nos. 00197259;

00197260

Before: J.H. Gillis, P.J., and G.S. Allen and J.B. Sullivan, JJ.\*

MEMORANDUM.

Defendant pleaded guilty to first-degree criminal sexual conduct, MCL 750.520b; MSA 28.788(2), and attempted first-degree criminal sexual conduct, MCL 750.92; MSA 28.287 and MCL 750.520b; MSA 28.788(2). For those respective convictions, he was sentenced to concurrent terms of eight to twenty years' imprisonment and three to five years' imprisonment. He appeals as of right. We affirm. These cases have been decided without oral argument pursuant to MCR 7.214(A).

Defendant argues that Offense Variable 12 of the sentencing guidelines was improperly scored at fifty points with regard to his conviction for attempted CSC I. Although we agree and would follow this Court's analysis in *People v Raby*, 213 Mich App 801, 802; 541 NW2d 282 (1995), on the issue, we decline to grant defendant any relief because his three- to five-year sentence is to be served concurrently with the longer eight- to twenty-year sentence. Hence, any relief on this issue would have no practical effect on the length of defendant's incarceration. See *People v Sharp*, 192 Mich App 501, 506; 481 NW2d 773 (1992).

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

Defendant next claims that the prosecutor improperly referred to him as a pedophile and stated that he would most likely offend again without any evidence to support the statements. However, the issue was waived because defendant failed to provide this Court with the transcripts of the plea or sentencing hearing. *People v Anderson*, 209 Mich App 527, 535; 531 NW2d 780 (1995). In response to defendant's argument at the hearing on his motion for resentencing, the prosecutor stated that, based upon the representations and conduct between defendant and the two victims, defendant was a pedophile. Although a prosecutor may not intentionally inject inflammatory arguments with no apparent justification except to arouse prejudice, *People v Lee*, 212 Mich App 228, 247; 537 NW2d 233 (1995), this comment was focused on the evidence and did not deprive defendant of a fair hearing.

Affirmed.

/s/ John H. Gillis

/s/ Glenn S. Allen, Jr.

/s/ Joseph B. Sullivan