STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

PATRICK PETER PATTERSON,

Defendant-Appellant.

UNPUBLISHED
October 15, 1996

No. 157923
LC No. 91-001258

Before: Holbrook, P.J. and Saad and W. J. Giovan,* JJ.

PER CURIAM.

A jury convicted defendant of third-degree criminal sexual conduct, MCL 750.520d(1)(a); MSA 28.788(4)(1)(a), for the rape of his wife's fourteen-year-old sister. The judge sentenced defendant to eight to fifteen years' imprisonment; he now appeals and we affirm.

Although the suggested sentencing guidelines range for this offense is one to four years, the trial judge departed from the guidelines and sentenced defendant to eight to fifteen years. Defendant contends that this sentence was an abuse of discretion, and that this matter should be remanded for resentencing before a different judge. We disagree with both contentions. Departure from the guidelines is appropriate where the guidelines do not adequately account for factors that can be legitimately considered at sentencing. *People v Watkins,* 209 Mich App 1, 6; 530 NW2d 111 (1995). Here, the trial judge justified his upward departure based upon the familial relationship between defendant and the young victim, noting especially the psychological damage resulting from abuse of the victim's faith and trust in defendant. The relationship between the defendant and the victim (especially a familial relationship) is not a factor contemplated within the guidelines, and thus was a proper consideration here. *People v Milbourn,* 435 Mich 630, 660; 461 NW2d 1 (1990); *People v Houston,* 448 Mich 312, 328; 532 NW2d 508 (1995). We therefore find no abuse of discretion in the sentence imposed.

Defendant also argues that he was denied effective assistance of counsel, based upon his trial counsel's failure to call certain witnesses, failure to object to the prosecution's leading questions while

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

interrogating the fourteen-year-old complainant, and failure to obtain the complainant's alleged psychiatric records. We have carefully reviewed the record and are unable to conclude that, on the record presented, defendant has established ineffective assistance. The decision whether to call witnesses to testify is a matter of trial strategy, *People v Daniel*, 207 Mich App 47, 58; 523 NW2d 830 (1994), and as explained by counsel at the *Ginther* hearing, there were ample reasons not to call these witnesses. Similarly, it is well-known that objections may actually serve to underscore points made by the prosecution. *People v Rone, (On Second Remand)*, 109 Mich App 702, 718; 311 NW2d 835 (1981). Thus, the decision not to object to the form of the question posed to a fourteen-year-old complainant was doubtless a matter of trial strategy. Finally, we are unable to ascertain whether there is any merit to defendant's challenge to the failure to obtain the complainant's alleged psychiatric records, because the records have never been made a part of the court record. Because defendant failed to establish either deficient performance on counsel's part, or prejudice, the trial court did not abuse its discretion in denying defendant's motion for new trial.

Finally, defendant contends that the verdict was against the great weight of the evidence, and that the trial court abused its discretion in denying his motion for a new trial on this basis. We disagree. The fourteen-year old complainant testified that defendant penetrated her vaginally; if believed, this testimony alone supports a finding of guilt. Furthermore, defendant admitted that the semen stains on the comforter were his (although he attributed them to a sexual encounter with another woman). Accordingly, the verdict was not against the great weight of the evidence.

Affirmed.

/s/ Donald E. Holbrook, Jr.
/s/ Henry William Saad
/s/ William J. Giovan